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ELECTRICAL WIRE AND CABLE PRODUCTS

Report of H. Carl Goldenberg, Q. C., Special Commissioner, of an investigation into an Alleged Combine in the manufacture, distribution and sale of Electrical Wire and Cable Products.

Combines Investigation Act
Department of Justice
Ottawa

COMBINES INVESTIGATION COMMISSION

DEPARTMENT OF JUSTICE

OTTAWA

November 13, 1953

Honourable Stuart S. Garson, Q.C.,
Minister of Justice,
Ottawa

Sir:

I have the honour to transmit herewith the report of Mr. H. Carl Goldenberg, Q.C., who was appointed as a Special Commissioner under the Combines Investigation Act by the Governor in Council on May 1st, 1952 for the purpose of conducting an investigation as to whether a combine existed or was being formed in connection with the manufacture, distribution and sale in Canada, of electrical wire and cable and related products.

Preliminary inquiries into complaints of such an alleged combine had been made by the Combines Investigation Commission, but the pressure of work in other inquiries made it desirable to have a Special Commissioner appointed to conduct the full investigation which appeared to be necessary.

As the Special Commissioner points out in his covering letter to me, this investigation was in an advanced stage when the 1952 amendments of the Act came into force. It is therefore, as permitted by the transitional provisions, being made to you under the procedure in effect prior to such amendments.

Yours faithfully,

(Sgd.) T. D. MacDonald

Commissioner
Combines Investigation Act

LETTER OF TRANSMITTAL

Montreal, P. Q.
November 11, 1953

T. D. MacDonald, Esq., Q. C.,
Director of Investigation and Research,
Combines Investigation Act,
Ottawa, Ontario

Dear Sir:

I beg to submit herewith my report of an investigation under the Combines Investigation Act into an alleged combine in the manufacture, distribution and sale in Canada of electrical wire and cable products. This investigation has been made pursuant to Order-in-Council P. C. 35/2561, of May 1st, 1952, appointing me a Special Commissioner under the said Act to conduct such an investigation.

After due notice in writing to all the parties concerned, hearings were held in May and June, 1952, in Montreal and Toronto. In the course of 19 days of hearings, 19 witnesses were examined on oath and 403 exhibits were produced, identified and filed. All witnesses were represented by counsel who appeared on behalf of the companies with which the witnesses were associated.

Following the conclusion of the hearings, I requested Mr. G. R. Hunter, Commission Counsel, to prepare a Statement reviewing the evidence, both oral and documentary, which Statement was sent by me on December 29th, 1952, to the parties concerned as notice of the charges alleged against them in order that they should have full opportunity to be heard in person or by counsel before my report was made. Accordingly, counsel for all of the parties, except one, appeared before me on February 24th and February 25th, 1953, in Montreal, and made representations on the matters set out in the Statement of Commission Counsel and on the law and such other representations as they chose to make. Counsel for the party which was not represented advised me in writing that he associated himself with the representations of other counsel. The parties were also given an opportunity of submitting further representations to me in writing by March 18th, 1953, and such representations were submitted by counsel for six of the parties.

Certain information which I requested from the parties was furnished by them in written returns and authority was also received from them to examine returns made by them under the Statistics Act.

On November 1st, 1952, six months after my appointment and four months after the conclusion of the hearings, amendments to the Combines Investigation Act, which provided that all future reports are to be made by the Restrictive Trade Practices Commission, came into force. The amendments also provided that a pending inquiry may be continued and completed

and a report made thereon as though the amendments had not been passed. Having regard to the stage to which this inquiry had progressed, I continued and completed the inquiry and am reporting thereon.

Mr. G. R. Hunter, barrister, of Winnipeg, acted as counsel for the Commission and I desire to acknowledge the valuable services rendered by him and by Messrs. R. I. Milner and N. Thurm, of the Research and Investigation staff, throughout the hearings.

Yours faithfully,

(Sgd.) H. Carl Goldenberg
Special Commissioner.

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APPENDIX

REPORT OF THE SPECIAL COMMISSIONER

I. THE ELECTRICAL WIRE AND CABLE INDUSTRY

The wire and cable industry in Canada dates back to the turn of the century. It received its first stimulus from the First World War and a further and greater stimulus from the Second World War and the period of economic expansion which followed. It has expanded and diversified its production and now manufactures a complete range of wire and cable products.

1. Products

The products within the scope of the present inquiry include uninsulated conductors, weatherproof wires, rubber insulated and braided wire, cambric insulated and braided wire, thermoplastic wires and cables, power cables, telephone wire and cable, flexible cords, flexible armoured cable, tape and wire armoured cable, signal and control cable, non-metallic sheathed cables, magnet wires, asbestos insulated wires, and cord assemblies.

Many of these products are to a large degree standardized since, for the protection of the public safety, they must satisfy strict minimum specifications prescribed by the Canadian Standards Association. The standards are embodied in an electrical code which is the basis of inspection and approval by the public authorities.

Another feature common to the bulk of the products is that they use a copper conductor and that the price of copper and lead is a very considerable factor in costs. It was submitted on behalf of one manufacturer that raw materials account for more than 70 per cent of the sales dollar (Evidence, p. 698), and copper and lead represent a high proportion thereof.

Copper for the conductors is purchased from the suppliers in the form of bars. These are rolled into rods which are then drawn into wire. All wire and cable manufacturers in Canada, except Boston Insulated Wire and Cable Co. Ltd., draw their own wire. They purchase the copper rods from Phillips Electrical Works Ltd., and Canada Wire and Cable Co. Ltd., which operate the only mills in Canada for the rolling of copper rods for the industry. The Phillips rod rolling mill has been in operation since 1922 and that of Canada Wire since 1931.

2. The Wire and Cable Companies

The present inquiry has been concerned with the activities of ten wire and cable companies, of which nine are engaged in manufacturing and one is the selling organization of a manufacturer.

(1) Northern Electric Company, Limited

Northern Electric Company, Limited was originally incorporated in 1895, under the Dominion Companies Act, as Northern Electric and Manufacturing Company, Limited, to take over the manufacturing operations of the mechanical department of the Bell Telephone Company. In 1899 the Wire and Cable Company was incorporated under the Quebec Companies Act and took over the manufacture of wires, coils and cords previously manufactured by Northern Electric and Manufacturing and also the business of Alex Barrie Wire Insulating Plant. In 1911 Imperial Wire and Cable Company, Limited, was incorporated under the Dominion Companies Act to take over the Wire and Cable Company. In 1914 Northern Electric and Manufacturing and Imperial Wire and Cable were merged to form the present Northern Electric Company, Limited, which was incorporated under the Dominion Companies Act. The latter acquired control of Amalgamated Electric Corporation, Limited, in 1932, and in 1935 incorporated Dominion Sound Equipments Limited as a wholly-owned subsidiary. These companies do not manufacture wire and cable.

Northern Electric is a subsidiary of the Bell Telephone Company of Canada, which owns 56.39 per cent of its capital stock. Western Electric Company, Inc., another subsidiary of the Bell Telephone Company, owns 43.6 per cent of Northern's capital stock.

Northern manufactures wire and cable products at two plants, one located in Montreal and the other in Lachine, Que. In addition, the Company manufactures and distributes telephone and telegraph apparatus and equipment, radio receivers, radio communication and other electronic equipment, traffic signals and fire alarm systems. It also distributes the products of other manufacturers, including wiring materials, overhead and underground transmission fixtures and equipment, and power apparatus.

The Company operates its own branch and distributing houses across Canada for the sale of its wire and cable products and other electrical products. It also distributes through electrical wholesalers. It has an agent only in Newfoundland where it does not have a distributing house. Its head office is in Montreal.

(2) Phillips Electrical Works Limited

Phillips Electrical Works Limited was originally incorporated under the Dominion Companies Act in 1899 as the Eugene F. Phillips Electrical Works. In 1917 the name of the Company was changed to Phillips Limited, and in the same year a new charter was obtained as the Eugene F. Phillips Electrical Works Limited which acquired all the assets and liabilities of Phillips Limited. In 1926 the name was changed by supplementary letters patent to Phillips Electrical Works Limited.

In 1930 control of the Company was acquired by Associated Telephone and Telegraph Co., Chicago, Illinois. In 1941 control was

transferred to Automatic Electric Co., Chicago.

The Company manufactures copper rods, bare and insulated wires and cables, telephones, telephone apparatus and communication equipment. It was the first company to roll copper rods in Canada. A plant for the manufacture of copper rods and bare and insulated wires and cables is located in Brockville, Ont. Another plant in Montreal manufactures lead-covered and telephone cable and lead-covered power cable. The head office is in Brockville, Ont.

The products of the Company are distributed exclusively by Automatic Electric (Canada) Limited, which, at the time of the hearings in the present inquiry, was controlled by the same interests.*

(3) Automatic Electric (Canada) Limited

Automatic Electric (Canada) Limited was incorporated under the Dominion Companies Act in 1937. It was originally only a holding company for the shares of Canadian Telephones and Supplies Ltd. In 1943 it took over the business and assets of the latter company, which ceased to operate, and became a distributor of electrical equipment, including rod, wire and cable, and telephone apparatus, for Phillips Electrical Works.

Automatic Electric is a wholly-owned subsidiary of the International Automatic Electric Corporation, Chicago, Illinois, formerly Automatic Electric Sales Co. Ltd.

Automatic Electric (Canada) Limited does not manufacture but is solely the selling organization of Phillips Electrical Works. It distributes its products through branches, agents and wholesalers. Its head office is in Toronto.

(4) Canada Wire and Cable Company, Limited

Canada Wire and Cable Company, Limited was incorporated under the Dominion Companies Act in 1911. In 1929 it acquired from General Cable Corporation (New York) 100 per cent control of Standard Underground Cable Co. of Canada Ltd., which was engaged in the manufacture of electrical wires and cables in Hamilton, Ont. The charter of the latter company was surrendered in 1949. In the early 1920's Canada Wire and Cable acquired 100 per cent control of Bentz-Richardson Co. Ltd., Winnipeg, operating as a manufacturers' agent, and changed its name to Line Material Distributors Ltd. In 1951 the charter of this company was surrendered and its business has since been carried on by Canada Wire and Cable. In 1931 a Saskatchewan corporation under the name of Canada Wire and Cable Distributors Limited was formed.

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* After the conclusion of the hearings, it was reported in the press that British Insulated Callender's Cables Ltd., of London, England, had acquired the wire and cable business of Phillips Electrical Works and had formed a new Canadian company to carry on the business as from April 30th, 1953, under the name of Phillips Electrical Company (1953) Limited. It was reported at the same time that the name of Automatic Electric (Canada) Ltd., would be changed to Automatic Electric Sales (Canada) Ltd.

Canada Wire and Cable Company is controlled by Noranda Mines Ltd., which holds approximately 63 per cent of its outstanding capital stock. The late E. A. Wallberg, of Toronto, controlled the Company until early in 1929, originally through his own shareholdings and after 1918 through his holdings of shares of Leaside Munitions Co. Ltd., later known as Leaside Engineering Co. Ltd. In or about 1930 Noranda Mines acquired a considerable share interest and by 1943 owned more than 50 per cent of the stock.

Canada Wire and Cable manufactures and sells electrical wires and cables and steel wire ropes. It also operates a rod rolling mill. Its head office is in Leaside, Ont., where its main plant is located. The Company also maintains plants at Montreal East, Que., and Vancouver, B. C., for the drawing and stranding of bare copper wire. Distribution of the products is effected directly from the factory or branch warehouses and through agents and wholesalers.

(5) Canadian General Electric Company, Limited

Canadian General Electric Company, Limited, was incorporated under the Dominion Companies Act in 1892. It was formed as the result of a merger of the Canadian interests of the Edison General Electric Company, the Thomson-Houston Electric Company, and the Toronto Construction and Electrical Supply Co. Ltd. In 1924 General Electric Company (New York) acquired control of the Company following the purchase of more than 95 per cent of its outstanding common shares.

Canadian General Electric is engaged in the manufacture of a wide range of electrical apparatus, appliances, supplies and related products. Its head office is in Toronto. Its only electrical wire and cable plant is located in Peterborough, Ont. It distributes its products through its own branches and warehouses across Canada and through wholesalers.

(6) Boston Insulated Wire and Cable Co., Limited

Boston Insulated Wire and Cable Co., Limited, began manufacturing operations in Canada in 1911 as a United States corporation operating under a Dominion licence. The present Company was incorporated under the Dominion Companies Act in 1918. While it is not a subsidiary of the United States company of the same name, the shareholders of the latter company hold the controlling shares of the Canadian corporation.

The Company's head office and the plant for the manufacture of electrical wires are located in Hamilton. It has no other warehouses nor branch offices. Its products are distributed mainly through wholesalers and a number of agents.

(7) Cables, Conduits and Fittings, Limited

Cables, Conduits and Fittings, Limited, was originally incorporated as the Insuladuct Manufacturing Company, Limited, which, according to the evidence, was in operation at least as early as 1912.

The original product was "insuladuct". The Company later began to manufacture armoured cable and non-metallic sheathed cables, rubber-covered braided wire and cable, rubber-insulated lead-covered (low voltage) cable and other products. In 1920 the name was changed to the L & N Company, Limited. Cables, Conduits and Fittings, Limited, was incorporated under the Dominion Companies Act in 1929. It is not controlled by any other company.

The Company began to draw copper wire and to manufacture weatherproof wires in 1938-1939. During the war years it commenced the production of power cables and in the past three or four years the insulation of wires both plastic and rubber.

The Company's head office and plant are located in St. Johns, Que. The distribution of its products is effected directly and through wholesalers and agents.

(8) Federal Wire and Cable Company, Limited

Federal Wire and Cable Company, Limited, was originally incorporated in 1919 as the Live Wire Company, Limited. The present Company was incorporated under the Dominion Companies Act in 1930. It is not controlled by any other company.

The Company's head office and its plant for the manufacture of wire and cable products are located in Guelph, Ont. Its products are distributed directly and through agents and wholesalers.

(9) Triangle Conduit and Cable (Canada) Limited

Triangle Conduit and Cable (Canada) Limited was incorporated as a private company under the Ontario Companies Act in 1920 under the name of Canadian Triangle Conduit Company, Limited. In 1942 the name was changed to Canadian Triangle Wire & Cable Co., Limited, and in 1951 to Triangle Conduit and Cable (Canada) Limited. While the Company is not a subsidiary of nor controlled by any other company, four of its five directors are also directors of Triangle Conduit and Cable Co., Inc., a United States corporation. It would appear that both companies are controlled by the same shareholders.

The Company's business was confined to the manufacture and sale of wire and cable products until 1952, when a plant was erected for the production and sale of rigid conduit. The head office and the wire and cable plant are located in Toronto. Distribution of the Company's products is effected directly and through wholesalers and a manufacturers' agent.

(10) Industrial Wire and Cable Limited

Industrial Wire and Cable Limited was incorporated in 1937 under the Dominion Companies Act as Industrial Electric Products Limited. Its name was changed to Industrial Wire and

Cable Limited in 1948. It is not controlled by any other company.

The Company manufactures electrical wire and cable at its plant in Toronto where the head office is also located. Its products are distributed directly and through wholesalers and agents.

3. Production in Canada

Of the nine manufacturing companies which have been described, only Northern Electric, Canada Wire and Cable, Canadian General Electric and Phillips Electrical, which may be referred to as the "Big Four", manufacture a complete line of wire and cable products. The products of the five smaller companies are shown in Table I of the Appendix to this report. All of the companies manufacture weatherproof and non-metallic sheathed cable, while all but one manufacture some kinds of rubber-insulated and braided and thermoplastic wires and cables and armoured cable. In addition to the wire and cable products of the nine companies, aluminum wires and cables are produced by other manufacturers who do not fall within the scope of this inquiry.

Statistics on the value of production of wire and cable products in Canada for each of the years from 1937 to 1951 are set out in Table II of the Appendix. An analysis shows that:

(i) The total value of production of the wire and cable industry in Canada rose from $15.2 million in 1937 to $123.8 million in 1951.

(ii) The nine manufacturing companies described above produced 93.6 per cent of the total value in 1937 and 92.9 per cent in 1951.

(iii) The "Big Four" produced 85.4 per cent of the total value in 1937 and 78.6 per cent in 1951.

(iv) If aluminum wires and cables produced by other manufacturers are excluded, the nine manufacturing companies produced more than 99 per cent of the total value of wire and cable products in Canada in each of the years from 1948 to 1951.

4. Imports and Exports

Statistics on the value of imports and exports of wire and cable products in each of the years from 1937 to 1951 are set out in Table III of the Appendix. The figures show that the value of imports of wire and cable products has been only a small percentage of the total value of production of the industry in Canada, ranging between a low of 1.3 per cent and a high of 4.4 per cent throughout the period of 15 years. In 1951 the figure was 3.3 per cent. The United States is the principal source of the imports, which fall mainly in the category "Non-Ferrous, n.o.p., Wire, single or several, covered with any material, including cable so covered, n.o.p." This item includes power cable.

Imports from the United Kingdom increased in 1950 and in 1951, but even in these years imports from the United States accounted for approximately 70 per cent of the total. Generally speaking, a tariff of from 20 per cent to 22 per cent is applicable to the principal lines imported into Canada from the United States and the United Kingdom. The British preferential rate on certain lines is lower.

Exports of wire and cable products from Canada, as is shown in Table III, rose from 2.9 per cent of the total value of production in 1937 to 5.9 per cent in 1940. During the war years the percentage rose considerably, increasing from 7 per cent in 1941 to more than 20 per cent of the total value of production in 1943, and then declining to about 10 per cent in 1944 and 1945. In 1951 exports represented 3.6 per cent of the value of production. They fell mainly in the categories of "bare copper wire" and "copper wire and cable insulated."

II. POLICIES AND PRACTICES OF THE INDUSTRY

The wire and cable companies whose activities have been investigated in the course of this inquiry operate independently and compete for the sale of their products. However, in relation to the determination of selling prices, their operations have been governed by common policies and practices which, as established by various witnesses and by numerous documents, have been pursued by agreement or arrangement in the industry over a period of many years.

1. Price Uniformity

Insofar as concerns the selling price of their products it has been the basic policy of the wire and cable companies to establish uniformity among themselves. Witness after witness reiterated this policy, asserted that it flowed from the nature of the industry, and defended it on the grounds of public interest and the interest of the industry in "orderly marketing". Extracts from some of the testimony on this point follow.

D. C. Borden, sales manager of the wire and cable division of Northern Electric:

Q. Tell us what your purpose was and Mr. Macdonald's purpose, if you know it?

A. The term "orderly marketing" has been used to describe that, and I really think it is a good term because that is the opposite to "chaotic marketing", and where we are offering products that are absolutely identical, built to the same C.S.A. specification to customers who want exactly the same amount and to customers who will be buying again and again and again, and have to send business around, as they call it, it calls for similarity in prices. Anything else would be chaos because there would be no system although the products are identical. Let us say the particular group should be sold for $5. Somebody decides to be smart and sells it for $4.95; five cents is not going to put them out of business but the next time somebody will say, "I will sell it for $4.90", and then it goes down too low and comes up again and it can only be described as chaos. My purpose is developing some form of orderly marketing which in the long run may not possibly cost the consumer any more and gives the customer the right to buy, to spread their business around. So I say my object is to achieve orderly marketing.

Q. Does that statement represent to your knowledge the views of your Company?

A. Oh, definitely, as far as I can interpret the management's view.

(Evidence, pp. 418-419)

J. H. Fitzgerald, supervisor of the service department of Phillips Electrical Works:

Q. Mr. Fitzgerald, you have told the Commissioner and the rest of us that are listening that these elaborate arrangements are in the interests of better marketing. Have you any opinion as to what results have been obtained?

A. We feel it is a definite way of establishing stability to our marketing arrangements. We all manufacture to the same specifications. I mean, no manufacturer can say his product is better than some one else's and demand a premium. It is necessary to find some common denominator if you are going to stay in business. Whether you find it by actually discussing it with your competitors or whether you copy their price sheets when they are issued, but however you do, it must be done in some manner. As far as our Company is concerned and as far as all companies are concerned, we pay exactly the same price for our raw materials. As far as Phillips Electric is concerned, raw materials constitute over 70% of our total sales dollar. With collective bargaining in labour you are paying pretty much the same labour rates. As far as we are concerned, labour wages and salaries and employee benefits constitute roughly 11% of our sales dollar. We pay the same taxes. They run around 7%. These three elements alone constitute over 90% of our sales dollar. On the other end, dividends to our owners are somewhat under .9 of our sales dollar and funds retained in the business are around 2%. So that I simply submit that we are not doing anything that would be a detriment to the public interest. I think that is about all I have to say.

(Evidence, pp. 697-698)

Q. Do you compete at all with the other manufacturers; are you in competition with the other manufacturers?

A. Oh, very definitely.

Q. I take it from your evidence to-day that you do not compete on the basis of price because you have said you have uniform prices?

A. That is correct.

Q. Would you tell me on what basis you do compete? Excuse me; before you answer, I may also conclude from your remarks in the last few minutes that the quality is the same?

A. Roughly.

Q. What would induce a customer to purchase from you as compared with the Northern Electric or the Canada Wire

& Cable or any of the other manufacturers; what has your salesman to offer that is different?

A. Mostly service.

Q. What does service consist of?

A. Delivering on time and giving them what they want when they want it, carrying stocks for them.

(Evidence, pp. 699-700)

T. A. Lindsay, vice-president and general manager of Automatic Electric:

Q. On what basis would your salesmen be able to retain this business in competition with others since you have adopted similar terms and prices; what would your salesmen offer?

A. We would offer three factors which we consider in competition. First of all, there is a price and then delivery and service and quality.

Q. You have eliminated the price?

A. Yes.

Q. Would you say there is a difference in quality of these items so far as they are standard items?

A. Yes.

Q. What does service mean?

A. I would say the availability of material and various other sales promoting devices which we use in order to encourage the business of our customers such as price cards and the work of salesmen dealing with contractors.

Q. Is it correct to say that what you were trying to eliminate was the competition on the basis of price but not competition in any other sense?

A. I think that would be a fair statement.

Q. You were still as anxious to sell as much of your own product as you could?

A. Oh, definitely.

(Evidence, pp. 743-744)

V. N. Longtin, president and general manager of Cables, Conduits and Fittings:

Q. Yes, well, what was the purpose of the uniformity?

A. I couldn't tell you that. To save a lot of trouble in the industry, everything being uniform.

Q. What trouble would you have in the industry if things were not uniform?

A. All kinds of prices, to begin with. Different troubles in freight rates, along that line.

Q. Well, does a difference in price cause trouble in the industry?

A. It quite often does.

Q. Well, then, does a difference in freight rates cause trouble in the industry?

A. It influences the party who gets the order.

Q. Do you mean the customer?

A. The one with the lowest prices would jump in and grab the business.

Q. That is what you mean by trouble in the industry?

A. The man with the lowest price would get the business. We don't all have the same prices. We find some out on the figures with some of the set prices.

Q. If people were not out on figures you would sell it at the same price?

A. Exactly.

(Evidence, pp. 971-972)

Q. From what you said, is it not correct to say that these various steps which have been taken between the industry on information exchanged between the industry such as I referred to a few minutes ago, are in fact designed to bring about a uniformity in prices because you said that gets away from trouble in the industry?

A. Yes, uniformity.

Q. Uniformity in prices and that to the extent that you were successful in that objective, in establishing uniformity in prices, then you would also be successful in preventing chiselling. Does it follow?

A. Naturally.

(Evidence, p. 973)

BY THE COMMISSIONER:

Q. In answer to Mr. Hunter you said that this uniformity, that was the term used, was intended to prevent trouble in the industry. In other words, you indicated that you feel that uniformity is in the best interests of the industry. Does it prejudice your customers? Does it prejudice the public?

A. I wouldn't say so, because I do not feel any of us are taking much of a profit. It is not a wide profit line. You have probably seen some of the costs of some of the companies. It isn't really gouging the public, getting together to soak the public, in other words.

Q. You would say to me, then, you don't think the policies which you have outlined are detrimental to the interests of the public including your customers, and the ultimate public who have to pay in some form or other?

A. We don't think so.

Q. You have been in the industry a long time?

A. Forty years.

Q. And I think you said you produce quite a large variety of the products?

A. That is right.

Q. Do you have any advantage over your competitors in the production of any particular item? Can you or do you produce some of the items at a lower cost?

A. It is quite possible. We don't know the costs of competitors. Our overhead is probably lower than some of the several small plants.

Q. Notwithstanding that fact do you think it is still in the interest of the public that you and your competitors sell that product at the same price, even if your costs are actually lower?

A. I don't think there is enough difference in cost to show up in the prices. There would be a very small difference. Labour is not the big item in our lines. Labour is a small part in the cost of a part or in any type of cable.

Q. Would you say costs are relatively the same?

A. Very similar throughout the industry.

Q. And is the type of product very similar or are there differences in quality?

A. It is all made to standard. There is little difference in quality. It might be made better; some might be better equipped to make a better product, but material is all identical.

(Evidence, pp. 974-976)

G. W. Arnold, manager of Boston Insulated Wire and Cable:

Q. Is that correct, that, generally speaking, your products are similar in quality? When I say "your products", I mean the products between the manufacturers.

A. Yes.

Q. You work from C. S. A. specifications in most instances?

A. Yes.

Q. You manufacture a comparable product?

A. Yes.

Q. And your prices, as you indicated yesterday, are for the most part uniform prices?

A. For the most part, but we have not got to the part where we all agree on the same delivery.

Q. Where is the competition in the industry if it is not on quality and if it is not on price?

A. It is service mostly, and in a great many cases just a matter of personalities.

Q. Do you mean just delivery there?

A. Yes, delivery and quality. The quality has to be up to the standard.

Q. Is that the only alternative that the customer has between companies; if the price is the same and the quality is the same it works down to service which includes delivery dates and whether he knows a particular person in a particular company and he wants to give that person his business?

A. That is right.

Q. Is there any other factor or any other alternative open to a customer other than this question of delivery or service?

A. No, I think not, not vital.

(Evidence, pp. 1318-1319)

THE WITNESS: May I make one remark, that we have operated as we felt best and if we tried to operate any other way we would be out of business in a few years.

THE COMMISSIONER: Q. Why do you think you would be out of business?

A. Because if we quoted whatever we wanted to, our competitors would say, if he wants to cut prices we will cut further and the time would come when we could not operate.

Q. To use your own terms, you could under-cut your competitors?

A. Yes, they have enough uncompetitive items that they could cut on our items, that they would not feel it. The only way we could exist was to find out what they are quoting and quote the same.

Q. In the light of your experience in this industry, which has extended over 41 years, would you say that having to operate under the conditions which you have outlined it has been to the detriment of your customers?

A. No, it has not been to the detriment of the customers because I cannot see that it would do any customer any good if one small wire company after another went out of business and finally left it in the hands of a few wealthy people.

Q. In other words, you feel it is even worth your customers' while to pay a little more and maintain this production?

A. They might pay more now if there was cut-throat competition but when all the small men got out of the business they would pay considerably more, so I do not think it was to the detriment of the public or our customers or anybody to know what our competitors are doing and play the game just as they do. There is one other point. I think that we have quite a limited number of customers.

Q. That is your own firm?

A. Yes, it is not like you go and buy a pair of shoes at one store and you go into the next store and you buy a pair of shoes and you get them considerably less and you do not

know whether the quality is up to the other shoes. Our material is all standardized and I do not think the public is affected if we make a reasonable profit.

(Evidence, pp. 1355-1357)

C. S. Leary, manager of sales for the construction materials department of Canadian General Electric:

Q. What has been the real purpose in discussing such things as prices or jobber discounts, cash discounts or map freight rates or zone list prices; what is the object of having meetings and discussing those subjects?

A. When we think of wire and cable, we are thinking of a product normally that is made to a specification issued by the Canadian Standards Association. A great deal or great quantity of the product manufactured will be bought for resale, and, thinking there of the contractor buying for wiring a building, he sells his work. He will not pay us one five cent piece more for a piece of wire than he will pay anybody else.

THE COMMISSIONER: Would he pay you less if you asked him a lower price?

A. I think so.

Q. You think he would?

A. I think he would take it up, but he won't pay us any more.

THE COMMISSIONER: No, I agree with that.

A. And I would say that one of the reasons has been an effort to have a somewhat orderly marketing of these products.

MR. HUNTER: Q. First, would it be correct to say that orderly marketing, as you have used the phrase, is one in which there is a uniform price as between the manufacturers of the same product?

A. That would be my interpretation of it.

Q. And that has been then, or has that been an objective of the industry to your knowledge during the period during which you have been associated with it?

A. It has been an objective but it was never accomplished.

Q. But that has been the purpose of having meetings as far as you are concerned - has that been the purpose?

A. That would be one of them . . .

(Evidence, pp. 1486-1487)

Q. Now, are the price lists set on the basis of the most efficient manufacturer or the least efficient manufacturer?

A. Well, they are certainly not set on the least efficient manufacturer's basis.

Q. That is, there is not an effort made to protect the man with the highest cost?

A. Never was as long as I had anything to do with it.

(Evidence, p. 1493)

Q. Well, in the meetings of manufacturers where prices are discussed, does the discussion ever, or to what extent does the discussion, deal with this question of whose operating costs are to be considered as the basis on which profit is to be computed?

A. I have never heard anyone's cost. Sometimes I have seen price studies comparing the current price with the landed U. S. price, and then a suggested price. If a manufacturer could not live with the prices that we suggested he could state his reason for it. I have never heard anyone compare cost.

Q. Where he stated his reason for it, that he could not live at these proposed prices, then there was an effort made by the manufacturers to consider his complaint or his difficulty?

A. If he was - if there was only one complaint, no. I have seen times when everybody had to take business at practically no profit or else we would not have been in business. There has never been a policy, to my knowledge, of protecting the high cost manufacturer.

(Evidence, p. 1494)

T. J. Bell, vice-president and general manager of Federal Wire and Cable:

Q. What do you call a competitive price, the same price?

A. The word "competitive" is a very difficult thing to define. When I use it I say a competitive price is the price which is the same as that of our competitor. If it is not the same, obviously it is more than competitive.

Q. If it were a lower price would it be a competitive price?

A. You can certainly say that, yes.

Q. Your interpretation of competition is competition not on a price basis?

A. That is a difficult thing to say, Mr. Commissioner. As I tried to point out before, I do not believe there is a purchasing agent in Canada who really cares where he gets his wire and cable aside from the sales effort that goes into the sale of the product. We are selling a similar product exactly to that of our competitors made to the same specifications. We believe we make some of our products better than our competitor, but we cannot sell at a lower price for more than a very short time because then our price becomes competition to our competitors and they have to meet it. I would say that the word "competitive" is difficult to define, but as far as we are concerned to be competitive our prices have to be the same.

(Evidence, pp. 1910-1911)

MR. HUNTER: Q. You used the expression in answering one of the Commissioner's questions "orderly marketing" of the industry, Colonel Bell. What do you mean by "orderly marketing"?

A. I think that is a difficult term to define. In my opinion orderly marketing means an absence of severe price competition, unhealthy price competition.

THE COMMISSIONER: Unhealthy for whom?

A. Well, I would say unhealthy price competition from the point of view of a manufacturer eventually means unhealthy for the public, because if one or two companies are in a position to cut prices and eliminate other manufacturers, eventually they will end up controlling the whole market.

(Evidence, p. 1965)

Q. And do you feel that the wire and cable industry is in the best position to determine what is healthy or unhealthy from the point of view of price competition so far as the public is concerned?

A. I cannot think of anyone more qualified to do it.

(Evidence, p. 1967)

Q. I understood you to say that some price lists are prepared by other manufacturers and submitted to you?

A. Yes.

Q. And also that you might decide that the prices are too high or too low. Should you feel that the prices are too high in the sense that you can make an adequate profit by selling that item at a lower price, would you automatically go to that lower price or would you advise them and discuss with your competitors your proposal to do so?

A. Normally, I would say that we would discuss it, but I say in my memory, that on every instance we have discussed it that the lowest cost producer's price has prevailed. In other words, I would say that there had never been an umbrella held over a high cost producer.

Q. Is that why you say some of your competitors might have to stop producing some items?

A. Yes.

(Evidence, pp. 1891-1892)

J. H. Pryce, supervisor of the general sales department of Canada Wire and Cable:

THE COMMISSIONER: Q. Why were you seeking uniformity in prices, Mr. Pryce?

A. I think in order to answer that it would be a matter of arriving at a price that would be to the best public interest without detracting from the quality of the product.

Q. Were you thinking in terms of public interest in the sense of the interest of the purchasers of your product or were you thinking of the interest of the industry, the manufacturers?

A. Of course, I would say they go hand in hand. We were thinking of the interest of the purchaser using as a guide our own costs.

Q. How does the purchaser benefit when he is faced with the same prices for the same product by different manufacturers?

A. He benefits in this respect, where the price is the same he can be fairly well assured that it is among the lowest of the prices that would be offered by the manufacturers.

Q. How do you reason that out?

A. From my own experience.

Q. Would you say that the costs of production of all the manufacturers, whether they are big or small, are the same?

A. No.

Q. Who would you say would have the smaller costs, the bigger manufacturers or the smaller manufacturers?

A. That would depend upon your product.

Q. Is it not possible that by fixing one price regardless of the differences in the cost of production that the price is fixed at a higher level than would be the case because it is to include those whose costs are higher and those whose costs are lower?

A. No, I wouldn't say that, Mr. Goldenberg.

Q. What alternative has the purchaser got if, as I said before, it is the same product at the same price from each manufacturer?

A. Its quality.

Q. Are there differences in quality?

A. I would say there were. There is a minimum set by the codes of standards.

Q. Are there any other differences?

A. No, not in the recognized electrical wire lines.

Q. Would you say then that the only choice that the consumer or purchaser has is the choice presented by the differences in quality?

A. No, he has the choice of service and delivery.

Q. Is competition then confined to quality, service and delivery?

A. Yes, and customer contacts.

Q. In your view, the consumer or the purchaser does not lose out in having to pay the same price?

A. Quite definitely so.

Q. What would happen if you did not discuss prices or did not reach understandings on prices and one manufacturer were to offer some product to the consumer or purchaser at a lower price than the others; is that arising?

A. It is arising, yes.

Q. Frequently?

A. Quite frequently.

Q. By accident or by design?

A. I can't answer that.

(Evidence, pp. 1808-1810)

Witnesses representing the various companies thus admitted the policy of price uniformity and justified it on the grounds that:

(i) It is a necessary consequence of the standardization of wire and cable products;

(ii) It promotes "orderly marketing";

(iii) It operates in the public interest because the price is determined by the lowest-cost producer;

(iv) It is in the public interest to prevent "cut-throat competition" which might eliminate the smaller manufacturers; and

(v) It has not restricted competition on the basis of service and delivery.

2. Meetings of Companies' Representatives

To establish and to maintain uniform prices among themselves, the wire and cable companies did not set up a trade association or any other type of formal organization. Instead, it has been the practice, at least since 1912 (Evidence, p. 1645), for representatives of the companies to meet informally for the purposes of exchanging information, discussing prices and related policies and other matters of common interest and arriving at actual or tacit agreements or arrangements with respect thereto. To the same ends resort was also frequently had to the circulation of memoranda among the companies and to discussions by telephone.

The meetings of representatives of the various companies have been held at irregular intervals and in different places. For example, between September 11th, 1945, and April 2nd, 1952, meetings were held at Montreal, Toronto, Montebello, Que., Brockville, and the Caledon Trout Club. (Exhibits 273-278, 96, 97, 293, 98, 19, 99, 301, 62, 193, 303, 304, 313, 321, 401, 121, 119. Evidence, pp. 416, 424, 466-467, 471, 695, 714-715, 1285-1287, 1410-1411, 1441-1444, 1892-1896).

Witnesses testified that the number of meetings may have varied from as few as three to as many as eight in a year. The average appears to have been from four to six per year. For a number of years prior to July 1951 notices of meetings were generally sent out by K. P. Macpherson of Northern Electric. If the representative of a company wanted a meeting called, he would advice Mr. Macpherson who would then communicate with the representatives of the other companies. Mr. Macpherson thus functioned as co-ordinator of the group and usually presided at the meetings. This was not the result of a formal

arrangement but appears to have been a practice which had developed over a period of time. The procedure at meetings was informal; there was no secretary; and no formal minutes were kept. In some instances an individual would make notes for his own benefit and these notes were sometimes circulated to representatives of other companies. At times an agenda was prepared and circulated in advance of a meeting; at other times there would be no agenda or an agenda would be distributed at the meeting. (Evidence, pp. 37-39, 86, 416-417, 572-573, 603, 691, 1220-1221, 1330, 1344, 1371, 1472-1473, 1647-1648, 1878).

It appears from the evidence that as a general rule representatives of all the companies were notified of meetings when matters of interest to all were to be discussed, but when the matters would be of interest to only some of the companies, the interested parties alone were asked to attend. For example, when power cables were under discussion, the meetings were usually attended only by the manufacturers of such cables. (Evidence, pp. 903, 1325-1326, 1793, 1853, 1879).

Industrial Wire and Cable, the youngest company in the industry, was apparently not invited to meetings until 1943 or 1944. In his evidence, A. A. Wagman, sales manager of the company said:

THE COMMISSIONER: Mr. Wagman, your firm was established in 1938 or 1937?

A. The end of 1937.

Q. How did you find out about these meetings? Were you invited right at the beginning to attend these meetings?

A. No, I was not, Mr. Commissioner. I was invited about nineteen - it would be 1944, 1943 or 1944.

Q. Does that mean you went for about five years without being called to the meetings of the other manufacturers?

A. Yes.

Q. And is it right to say that during that early period you did not exchange price information?

A. That is true, did not.

Q. Was that because they were not taking you seriously at the time?

A. Well, there are certain factors entering into it. One of the companies sued us for patent and that court action took at least, I think, five years, six years to complete itself and that started 1938 or 1939, and it didn't finish, I believe, until 1943, 1944.

Q. Were you being sued because the other manufacturers did not want new competitors in the business?

A. You could put it down to that, sir.

THE COMMISSIONER: Yours is the youngest firm in the wire and cable business?

A. Yes.

Q. And did you win that patent suit?

A. Yes, we did.

Q. Then you were taken into the fraternity of manufacturers, is that right?

A. Yes, we were.

Q. Were you advised by the other manufacturers of this system of exchanging price information and meeting at different times and so on?

A. Prior to -- ?

Q. I mean, say, in 1944 or 1945?

A. No, I was not advised.

Q. Well, how did you come to attend those meetings?

A. Someone must have asked me to sit down to lunch somewhere some day. That is quite a few years ago, and I cannot remember how.

(Evidence, pp. 1985-1986)

The evidence shows that the meetings were usually attended by one or two representatives from each of the companies and that over a period of years the companies were represented as follows:

(i) Northern Electric: K. P. Macpherson, assistant wire and cable sales manager from 1932 to 1938 and sales manager of the wire and cable division from 1938 to 1951, attended the meetings regularly from about 1932 until July 1951. Originally he attended with C. F. R. Jones, manager of the wire and cable division from 1938 to 1944, and subsequently with C. Woolgar, sales superintendent of the wire and cable division from 1946 to 1949. M. R. Macdonald succeeded Mr. Woolgar on March 1st, 1949, and then attended with Mr. Macpherson. D. C. Borden, who succeeded Mr. Macpherson as sales manager in July 1951, attended with Mr. Macdonald after that date.

(ii) Phillips Electrical and Automatic Electric: T. W. Brackinreid, at that time sales manager of Phillips, appears to have attended two meetings in 1936 and 1937. From 1938 to 1944 either P. A. Timmons or J. H. Fitzgerald or both attended. From 1944 to 1946 P. A. Timmons apparently attended alone. Since then J. H. Fitzgerald has represented Phillips and T. A. Lindsay has represented Automatic. Mr. Timmons was sales manager of Automatic from 1938 to 1944 and supervisor of the service department of Phillips from 1944 to 1946. Mr. Fitzgerald was supervisor of the service department of Phillips from 1939 to 1944 and resumed that position in 1946. Mr. Lindsay first attended meetings as general manager and since November 1951 as vice-president and general manager of Automatic.

(iii) Canada Wire and Cable: T. A. Gass attended meetings from 1912 until May 1948 as general sales manager and since then as assistant to the general manager. W. J. Culliton, general sales supervisor from 1937 to April 1949 and assistant to the general sales manager since then, attended a few meetings with Mr. Gass. L. G. Lumbers attended some meetings as general manager from May 1948 to December 1951. J. H. Pryce, supervisor of the general sales department since April 1949 has attended meetings since 1948.

(iv) Canadian General Electric: C. S. Leary has attended meetings since 1930. Since 1945 either Mr. Leary or F. W. Barnhouse or both have attended. Mr. Leary was manager of sales for the wire and cable section from 1930 until September 1945 when he was appointed manager of the wiring materials division. In April 1952 he became manager of sales for the construction materials department. Mr. Barnhouse was manager of the wire and cable section of the supply department from 1945 until April 1952 when he was appointed manager of product planning, wire and cable, of the construction materials department.

(v) Boston Insulated Wire and Cable: G. W. Arnold, director and manager, has attended the meetings since the First World War.

(vi) Cables, Conduits and Fittings: V. N. Longtin and W. Northey have represented the company at the meetings for the last twenty years. Mr. Longtin first attended as vice-president and general manager and since April 1947 as president and general manager. Mr. Northey originally attended as president and since April 1947 as chairman of the Board.

(vii) Federal Wire and Cable: J. G. Smith has been attending the meetings for many years and T. J. Bell since 1938. Mr. Smith was president and general manager from 1930 to 1946 when he was succeeded as general manager by Mr. Bell, who had been assistant to the president from 1938 to 1946. In April 1952 Mr. Bell became vice-president and general manager.

(viii) Triangle Conduit: W. R. Greenshields attended as vice-president and general manager from June 1941 until his retirement in April 1952. J. W. Kerr also attended during most of that period and has been representing the company as vice-president and general manager since Mr. Greenshields' retirement.

(ix) Industrial Wire and Cable: Since 1943 or 1944, when first invited to attend, A. A. Wagman has represented the company at meetings as sales manager, and on a few occasions W. Wagman, president, also attended. The evidence shows that even since 1944 representatives of this company may not have been invited to attend some meetings in which they would have been interested.

The purposes of and the matters discussed at the meetings are set out in the testimony of various witnesses and are also shown by documents filed as exhibits in the course of the inquiry. Extracts from the testimony follow.

T. A. Gass, of Canada Wire and Cable:

Q. Over what period of time have you been attending meetings of manufacturers; how far back did that go?

A. 1912.

Q. Has the nature and purpose of the meetings been pretty much the same during that period or have they changed in the function they perform?

A. During the whole period they were concerned with the general good of the industry. When I say the industry I do not mean wire and cable only but the electrical business.

Q. Am I correct that the meetings of manufacturers were meetings of the wire and cable manufacturers?

A. You are correct.

Q. During the period when you were General Sales Manager was price information either with regard to changes in price or proposed new prices, that is, of published price lists or information with respect to special tenders, was that information exchanged between manufacturers by memoranda or letters?

A. Frequently.

Q. Did some of that information originate from your office and go to other manufacturers?

A. That is correct.

Q. And some would come from other manufacturers to you?

A. Yes, that is also correct.

Q. In the light of your experience in the industry, Mr. Gass, would you say that there has been a uniform policy as between manufacturers in trade discounts or jobber discounts?

A. I would say we hoped there was.

Q. In cash discounts?

A. Yes and no. For many years there was a standard cash discount and there was no cash discount and then it developed that some paid a cash discount and some did not, with the result that ultimately all had a cash discount.

Q. Was the subject of jobber discounts a subject which was discussed at these meetings to which you refer?

A. It was.

Q. When you say you hoped the policy would be uniform, was that the nature of the discussions at the meetings to arrive at the level of the discount?

A. It was.

Q. And was the subject of cash discount a matter which was discussed at meetings?

A. It was.

Q. As a result of the meetings was there an agreement as to what the level of jobber discounts would be?

A. There was.

Q. And would you say the same thing in the case of cash discounts?

A. I would. Perhaps, I might qualify that and say, "should be".

Q. That is, what the discount should be?

A. Yes, not "would be". I would like to make that quite clear. That is "should" and not "would".

(Evidence, pp. 1645-1647)

Q. Was one of the subjects which was discussed at meetings of manufacturers the appointment of wholesalers or jobbers?

A. It was.

Q. And the appointment of agents, was that also discussed?

A. It was.

(Evidence, p. 1648)

Q. Were zone list prices discussed at meetings which you attended?

A. They were.

Q. My understanding of a zone price list, it is a delivered price?

A. It is.

Q. It is F. O. B. destination?

A. Yes.

Q. So it includes the selling price plus a freight factor?

A. Yes, plus local delivery.

Q. Was the purpose of discussing zone list prices at a meeting in order to achieve uniformity in pricing?

A. It would be.

Q. Was map freight rates also a subject which was discussed?

A. It required no discussion. They were rates authorized by the Board of Transport Commissioners to railway companies.

(Evidence, pp. 1651-1652)

Q. So they are not a reprint of the existing rates?

A. It is not exactly a reprint of the closest rates.

Q. Who would be responsible, Mr. Gass, for working out the detail on map freight rates?

A. I believe Mr. Macpherson was the work horse.

Q. Would it be correct to say that such discussions as did take place at meetings of manufacturers with regard to map freight rates, that the object or purpose was to arrive at a uniformity in the map freight rates?

A. Correct.

Q. Is the subject of a general increase or decrease in wire or cable products a subject discussed at meetings which you have attended?

A. It is.

Q. Has there been any agreement by the manufacturers of what action will be taken or the extent of the increase or decrease?

A. That is a very broad question. There is and there is not. I have announced this is my price and if you do not like it, it is still my price.

Q. Would it be correct to say that the purpose of discussing a general increase or decrease at a meeting of manufacturers is for the purpose of coming to an agreement on the amount of the increase or decrease?

A. Agreement or advice.

Q. Would you say that the purpose of the exchange of price information, either by way of published price lists with revision sheets or special information on quotations to be made with respect to certain tenders not governed by the published price lists, is that purpose to achieve uniformity in the industry in prices?

A. In the hope of so doing.

Q. Was that also the purpose of holding these meetings at which subjects such as list price increase were discussed?

A. I would assume so, yes.

(Evidence, pp. 1653-1654)

J. H. Fitzgerald, of Phillips Electrical Works:

Q. What is the usual discussion at these meetings?

A. All problems of distribution and prices.

Q. When you refer to problems of distribution, do you mean the distribution to the consumer?

A. Generally to the wholesaler.

Q. That is the problem of distribution by the manufacturers to the wholesaler?

A. Yes.

Q. Does this involve a decision by the manufacturers as to who is to be considered a wholesaler and who is not going to be considered a wholesaler?

A. Yes, there were discussions on that subject.

(Evidence, pp. 603-604)

MR. HUNTER: Q. On this question of distribution, besides that question, what were some of the other questions that were discussed at the meetings of the manufacturers?

A. The general trend of prices. Sometimes a price study would be given that we should either increase our prices or decrease them.

Q. On this general question of prices was the question of discounts either cash discounts or wholesalers' discounts a matter that came up for consideration?

A. Yes.

Q. I think you mentioned at one point the wholesale discount had been increased from 6 or 6 1/2 to 15?

A. Correct.

Q. And had that been discussed at meetings of the manufacturers prior to this increase taking place?

A. Yes.

Q. Had there been a general agreement that the increase would be made?

A. Yes.

Q. Did all the manufacturers increase at the same time or at substantially the same time?

A. Yes.

Q. What about the question of cash discounts; has that been discussed at these meetings?

A. Yes, it has.

Q. Has there been an agreement among the manufacturers as to what the percentage of cash discount should be, or whether there should not be a cash discount?

A. I would say, speaking of our Company only, we never agreed to that but we were obliged to agree to it.

Q. When you say you never agreed to that, you mean at the meetings Phillips Electrical and, perhaps, Automatic Electric, took the position that they were not prepared to have a cash discount?

A. Yes.

Q. But, in fact, you did have one when the other manufacturers did?

A. Yes.

Q. What about the question of map freight rates; is that a subject which has been discussed at meetings of the representatives of the manufacturers at which you have attended?

A. Yes, it has.

Q. Has there been an agreement by those attending the meeting as to either the adoption or variation of map freight rates from time to time?

A. Yes, I believe the formula was established on a base of freight rates.

Q. You all use the same formula?

A. Yes.

Q. I mean the manufacturers?

A. Yes.

. . .

Q. Has the subject of a general price increase or a general price decrease of wire and cable products ever been discussed at these meetings?

A. Yes, it has been.

Q. And has the industry ever taken a general increase or decrease at the same time as a result of any of these discussions?

A. Yes, I believe so.

Q. I suppose there are probably more instances where there may have been an increase or a decrease with regard to a particular type of product?

A. That is correct. Our prices are largely governed by the price of raw materials, particularly copper.

(Evidence, pp. 607-610)

W. R. Greenshields, of Triangle Conduit and Cable:

Q. Would it be correct to say that insofar as prices are concerned that one of the objects of these meetings was the exchange of information between manufacturers by memoranda or so as

A. Yes, I would say that was the idea.

(Evidence, p. 1371)

Q. What was the discussion at these meetings other than price information to which you have referred?

A. Well, as far as I am concerned, I was only interested just in the products which we manufactured. Other than that I would have no interest whatever and would not attend after the sitting. With our own products it was chiefly the old jobber situation, distributors.

Q. By that do you mean the appointment of jobbers and wholesalers? That is an interchangeable word, I believe?

A. Yes.

(Evidence, p. 1372)

Q. What would be some of the other subjects that might come up for discussion at these meetings? Was the question of jobbers' or wholesalers' discounts discussed, that is, the level of the discount?

A. Yes, very often.

(Evidence, p. 1374)

Q. Was the subject of cash discounts discussed at the meetings?

A. On occasions, yes.

Q. I suppose when there has been discussions about changing cash discounts then it would be taken up at these meetings?

A. Yes.

Q. Would it be correct to say that the purpose of discussing cash discounts at the meeting would be the same as jobber discounts, that is, that if you did not have the same discount or make a change in the discount at the same time and to the same extent it would disturb this uniformity which had been achieved?

A. That is correct.

Q. I understand that in the price lists of some of the companies, and I would like to know if it applies in your company, that there are what are referred to as zone list prices?

A. Yes. . . .

Q. A zone list price, as I understand it, is a delivered price?

A. Yes.

Q. So it includes the price of the article and the freight increment?

A. Yes, that is based also on your proximity to an import point. . . .

Q. As there have been increases in recent years have those increases been reflected in zone list prices?

A. To some extent, yes.

Q. Would the adjustment required to be made be discussed at meetings of the manufacturers?

A. Yes.

Q. That would be another subject which would come up depending upon any increase to be made?

A. Yes.

Q. Again, as increases would be required, would there be uniformity as between manufacturers in increases in zone list prices?

A. Yes.

Q. And the same object and purpose, I suppose, would apply for that as it did for some of these other matters, that is, to continue to achieve uniformity?

A. That is right.

(Evidence, pp. 1375-1378)

J. H. Pryce, of Canada Wire and Cable:

MR. HUNTER: Q. What was the main purpose of holding these meetings of manufacturers?

A. To discuss the general aspect of the wire and cable business as it reflected on both the product and the price to the consumer.

Q. Was the uniformity in price what you were trying to achieve?

A. That is right.

Q. Such things as the jobbers' discount or cash discount or zone list prices or map freight rates all influenced the price at which the product would be sold?

A. That is right.

Q. Was that the purpose of discussing these particular factors at these meetings of manufacturers?

A. Yes.

(Evidence, p. 1807)

K. P. Macpherson, of Northern Electric:

Q. These various things to which I have been referring, such as prices and cash discounts or jobbers' discounts, standardization, map freight rates and zone prices, some of those you remember having been discussed?

A. Yes.

Q. At the various meetings?

A. Yes.

Q. Were decisions made at these meetings as a result of which action was taken by one or more or all of the manufacturers?

A. Yes.

(Evidence, p. 36)

It is clear from the evidence that the main purpose of the meetings of representatives of the wire and cable companies was to establish and to maintain price uniformity. To this end discussions and agreements or arrangements at the meetings centered on prices and factors affecting prices such as map freight rates, zone list prices, cash discounts, and jobbers' discounts. Discussions on the appointments of jobbers and agents were also related to price policies. Other matters dealt with at meetings were standardization of product, improvement of product, methods of packaging, raw material supplies, governmental regulations, and special problems. (Evidence, pp. 30, 1870).

3. The Circulating Memorandum System

Information on prices and related matters with a view to arriving at or giving effect to agreements or arrangements on price uniformity in the industry has been exchanged, at least since 1912, not only at meetings of representatives of the various companies but also by means of memoranda circulated among the interested parties. (Evidence, pp. 1656-1657). The form of these memoranda and the mechanics for their distribution show a studied effort at concealment.

One of the persons representing each company at the meetings has also been acting as its nominal representative for the purpose of receiving and sending out the memoranda in question. It has been the practice, at least since 1930, for the sender of a memorandum to sign only the first letter of his surname. Occasionally it might be signed for him in this way by a member of his staff. (Evidence, pp. 172-177,

630-631). An identical or carbon copy of the memorandum was at the same time prepared for and sent to the other interested companies. The intended recipients of each memorandum were usually indicated in the lower left-hand corner of each copy by means of the initial letter of their surnames. At times the initials of both the Christian name and the surname were used to indicate the recipients and at times the signature contained more than one initial. The full name of each party appeared very rarely. (Evidence, pp. 55-58). These memoranda were described at the hearings and are referred to in this report as "circulating memoranda". The following is an example of a typical memorandum:

January 7, 1949.

Next Meeting

Herewith the agenda for the meeting to be held in Toronto at 9.30 A.M. January 11th.

M

GFBS/ALGWN

(Exhibit 99, p. 6)

In some cases memoranda were sent out unsigned but the intended recipients were indicated by the initials in the lower left-hand corner. In such cases the senders would usually be determined by a process of elimination. (Exhibit 336; Evidence, pp. 1571-1572).

Some of the circulating memoranda of more recent date bear no signatures and do not indicate the intended recipients of copies on the documents themselves. A number of these were filed as exhibits and were identified by witnesses as examples of the exchange of information between manufacturers by memoranda. (Exhibits 341, 386). Such memoranda have dealt with the price that a manufacturer proposed to quote on a tender.

The circulating memoranda were normally typed on plain paper with no letterhead, the only reference to the sending company being generally the initialled signature. As already pointed out, at times even this was omitted. The memoranda were mailed in plain envelopes addressed to the representative of the recipient company and were usually marked personal. Some of the envelopes intended to be used for such memoranda were filed as Exhibits 25 and 147.

Questioned on the circulating memorandum system, D. C. Borden, of Northern Electric, said:

Q. How is that information passed, is it passed in the form of a telephone call or is it a letter or a memorandum?

A. It is a piece of paper containing the information we propose to quote, and then gives details.

Q. Are copies sent to all concerned?

A. Yes.

Q. You say it is a piece of paper and it is in the form of a memorandum. Do you sign it, or does Northern Electric sign it?

A. No.

Q. How do your competitors know it emanates from Northern Electric?

A. Quite frankly, I see some of these I do not know who they emanate from. It is a combination of a sort of typing on it. This thing has been going on so long that when I pick up one of these now I can generally tell who it is from. If I can't, other people who handle them always can. Sometimes I wonder how they do know who it is from. There are no initials on it. At any rate, as you know, you can tell typewriters and there has never been any difficulty. As a matter of fact, I remember now the simplest check is the envelope it comes in.

Q. Is that envelope addressed to your Company?

A. They are addressed to me.

Q. Personally?

A. Yes, although I don't see them.

Q. You do not see any of them?

A. Very, very few.

Q. To whom did they come?

A. They come to Mrs. Kent. She opens my mail and normally those things she immediately takes direct to Macdonald's Department. I see them occasionally. Occasionally I will open the mail myself. These I see are a very small percentage of the whole.

(Evidence, pp. 433-434)

Miss R. Martell, of Cables, Conduits and Fittings, said:

Q. I will show you Exhibit 130, and would draw your attention particularly to document coded 3 NE 11-9-2, Serial No. 4488. With regard to the memo on typewritten portion only, can you say whether you remember seeing or receiving a copy of that memo dated June 14, 1951?

A. Yes, I received that.

Q. Do you know the sender, who originated this document?

A. No, I don't.

Q. Then if you were going to reply?

A. I can't recall now. At the time if we replied to it the only way I would know would be from the envelope.

Q. From the envelope?

A. Yes.

(Evidence, pp. 1009-1010)

With respect to the recipients of these memoranda K. P. Macpherson, of Northern Electric, said:

Q. Would the envelopes be addressed to the company or to you personally or to them personally?

A. They would be addressed "c/o the company" and marked "Personal".

Q. "C/o the company" and marked "Personal" and addressed to you when you were there?

A. Yes.

Q. In your absence either Mr. Macdonald or Mr. Woolgar might deal with it but it would still be addressed to you?

A. I suppose it would. Actually I don't see the incoming envelopes.

Q. The memos which originated in other companies and which were circulated around under this system, in some cases, I gather from the documents that you identified yesterday, would only go to certain other manufacturers. It might not go to all the wire and cable manufacturers. Is that correct?

A. That is correct.

Q. But if there was a letter "M" on the list indicating the recipients, did that always indicate that Northern Electric received a copy of that memo?

A. I would think so.

Q. To your knowledge did you receive a copy?

A. Other than by mistake.

(Evidence, pp. 72-73)

Exhibit 24, an unsigned and undated document found in the files of Northern Electric, was identified as instructions left for her successor by Mr. Macpherson's secretary on her retirement in 1950. (Evidence, pp. 79-80, 170). The instructions outlined the procedure to be followed in connection with outgoing and incoming correspondence between Northern Electric and its competitors. The following is an excerpt from this exhibit showing in brackets ink or pencil insertions which appear on the original typed document and showing also by a line drawn through them words which have been struck out in the original document:

INSTRUCTIONS - DEPARTMENT 406

. . .

Sheets First thing each morning, you copy in red book those sheets that were sent out the night before, then ~~file them in red folder~~. (destroy)

The sheets from competitors come in plain white envelopes marked "Personal". You open these, with the rest of the mail, stamp date on the back and pass them along to Mr. ~~Woolgar~~ (Macdonald). Information on prices goes first to Mr. Macpherson, then to Mr. Clish. These circulate outside, are typed on cards by girls outside, then are placed in box marked "Sheets". You then file them in red folder.

Each night the sheets we sent out are given you by the girls and Engineers outside. These are signed M, placed in plain white envelopes, marked "Personal" and sent out by you. The addresses to which you send them will be found facing you pasted on desk or on card in drawer behind you - for instance.

G sheets go to T. A. Gass
F " " " J. H. Fitzgerald
~~B " " " F. W. Barnhouse~~
(B " " " F. W. Barnhouse)

There are ~~nearly~~ always these ~~three~~ (three), sometimes more. Have envlopes ready each night. IMPORTANT - Be sure these go out in mail each night. Be sure they are not left lying in mailing basket.

Sometimes Mr. Macpherson has mail for these people himself - like notices of meetings, etc. These go in the same envelopes.

. . .

(Exhibit 24)

When shown this document, Mr. Macpherson said:

Q. This document is headed "Instructions Department 406"; is that correct?

A. Yes.

Q. Do those instructions which are set out in that document indicate, to your knowledge, the procedure which was followed in Northern Electric with regard to circulating memoranda which were either sent out by you or received by Northern Electric from other manufacturers?

A. I would say it was correct.

(Evidence, pp. 79-80)

Mrs. J. Kent, secretary to Mr. Macpherson before July 1951 and to Mr. Borden since that date, said:

Q. The instructions that are set out on Exhibit 24 set out the procedure which has been followed since you have been secretary to the sales manager?

A. Not right now.

Q. But were they being followed up until, say, Mr. Macpherson's departure for Toronto, which I understand was in 1951?

A. Yes.

Q. If you would look at Exhibit 24, in the fourth paragraph reference is made to "G" sheets and then "F" sheets and "B" sheets. What are those "G" sheets, "F" sheets and "B" sheets?

A. Sheets that were sent out to "G", "F" and "B".

Q. Would those be price sheets; that is, advices of price changes or revision in price?

A. Yes.

Q. Perhaps I had better draw your attention to, I think it is the sixth paragraph where it says:

> "Sometimes Mr. Macpherson has mail for these people himself, like notices of meetings, etc."

Do you see where that appears?

A. Yes.

Q. The type of information which Mr. Macpherson might send out, such as notice of a meeting, would not be classed as a "B" sheet or a "G" sheet; is that correct?

A. That is correct.

Q. A "G" sheet would be something different from a notice of meeting?

A. Yes.

Q. Am I correct it would be price information or price changes or price lists? Is that what is meant?

A. Yes.

Q. I am showing you Exhibit 25, which consists of a series of envelopes; do you remember seeing any of those envelopes before?

A. Yes.

Q. Were these the envelopes or the type of envelope in which the "G" sheets would be sent out?

A. Yes.

(Evidence, pp. 170-171)

In connection with Exhibit 24, Mr. Borden said:

Q. Does it set out, to your knowledge, the practice that is being followed with regard to the distribution of such information as is referred to in the instructions?

A. The principle of this is still in effect.

Q. I notice on Exhibit 24 there is reference made to G's sheets?

A. Yes, G's sheets.

Q. And that indicates that G's sheets go to Gass?

A. Yes.

Q. What is the initial for the Northern Electric Company or for you as sales manager?

A. That is "M".

Q. That at one point represented Mr. Macpherson?

A. Yes.

Q. Is "M" still the designation for the Northern Electric?

A. Yes, it is still there. Since we have Macdonald you could say it stands for that. It still doesn't mean anything.

Q. You represent the Company?

A. Yes. I haven't read that. I got it before and I read it but I think we have varied from this practice but in general this is the way it was done in Mr. Macpherson's time and, perhaps, when I took over a little more was delegated to Macdonald, otherwise this is substantially the way we did it.

(Evidence, pp. 435-436)

Exhibit 142, found in the files of Northern Electric, shows the practice followed by this Company when preparing price information to be sent to other wire and cable manufacturers. The exhibit includes two price sheets on which the following notation appears: "50 With/20 Without". Questioned on this, S. H. R. Clish, of Northern Electric, said that the notation indicated that 50 sheets for distribution to personnel of Northern Electric were to bear Northern's master-book identification, while 20 other sheets for distribution to Northern's competitors were not to bear this identification. (Evidence, pp. 5464-5467).

Examined on a document filed as Exhibit 123, Mr. Borden said:

Q. Would you look at document coded 3NE5-2-3? Is that, presumably, the envelope in which this came?

A. That came in an envelope like that.

Q. This is addressed D. C. Borden, P. O. Box 6124, Montreal, Quebec, and it is marked "Personal"?

A. Yes.

Q. Is there any reason for this coming in this envelope? It originates with Mr. Fitzgerald of Phillips Electric. Is there any reason for them not using their regular stationery or their letterhead or envelopes?

A. It is just one of those things that was done long before I came around and it is still done with the exception that Mr. Macpherson used to open them up. Now the stenographer opens them and sends them direct to Macdonald and I do not see them. The reason for using a plain envelope was because it was always done that way.

(Evidence, p. 479)

At a later stage of his examination, Mr. Borden said:

Q. Is this system of circulating memoranda between various manufacturers in plain envelopes and plain paper part of this overall camouflage?

A. Again, I inherited it.

Q. I appreciate that.

A. It looks like it to me. I didn't start it. It certainly seems to be that sort of a thing.

Q. Who is the object of the camouflage; is it the consumer?

A. I don't know. I have asked that question several times and I don't know the answer.

Q. Have you ever discussed this with your chief, and I understand your chief is Mr. Eastlake?

A. Yes.

Q. Have you ever discussed this camouflage with Mr. Eastlake?

A. Yes.

Q. Have you ever had an explanation from him?

A. You don't need any explanation. He has much the same opinion about it as I have and he has expressed them to me within the last few weeks.

(Evidence, pp. 500-501)

The letters of designation or identification used in the circulating memoranda and price sheets for each of the wire and cable companies have been as follows:

Northern Electric - "M" originally designated Mr. Macpherson and now designates Mr. Borden. (Evidence, p. 436). "B" may be used occasionally.

Canadian General Electric - 1930-1945 - "L'y" and "L" for C. S. Leary. Since 1945 "B" for F. W. Barnhouse. (Evidence, pp. 82, 1494-1495.)

Canada Wire - At the present time "L's" for L. G. Lumbers is being used; prior to that "G" for T. A. Gass was used- (Evidence, pp. 1825-1826).

Automatic Electric and Phillips Electrical - At the present time "F" designates J. H. Fitzgerald; formerly "T" for P. A. Timmons was used. (Evidence, pp. 615-616, 825).

Cables, Conduits and Fittings - "L", "L'N" and "LO" have all been used to designate V. N. Longtin. (Evidence, pp. 906-907, 985, 990).

Federal Wire - Normally the letter "S" for J. Godfrey Smith is used, but occasionally "B" for T. J. Bell may be used. (Evidence, p. 1887).

Boston Insulated Wire - "A" for G. W. Arnold is the only letter of designation that has been used. (Evidence, p. 1240).

Triangle Conduit - "K" for J. W. Kerr is now used, and prior to that "G" or "GR" for W. R. Greenshields was used. (Evidence, pp. 580, 906, 1384).

Industrial Wire - Since 1943 or 1944 "W" has been used to designate either A. A. Wagman or W. Wagman. (Evidence, pp. 2009-2010).

Although the letter in each case is the initial of the surname of an official of the company, the evidence established that it was generally intended to designate the company and not the official. (Evidence, pp. 67-72).

4. Telephone Discussions

Information on prices and other matters of mutual concern to the wire and cable companies with a view to implementing the policy of price uniformity was also frequently exchanged by telephone communication. In this connection witnesses mentioned particularly information on tenders and on changes in base prices. (Evidence, pp. 716, 859-862, 873, 995-996, 1212-1213).

C. S. Leary, of Canadian General Electric, said:

MR. HUNTER: Q. Is or was price information on the special tenders exchanged between manufacturers during the period when you had direct responsibility for setting a quotation on special tenders, that is, prior to Mr. Barnhouse coming into the picture?

A. Yes, sir.

Q. Was price information on prices or on quotations to be quoted exchanged between manufacturers?

A. At times, yes.

Q. And what was the reason for that?

A. The reason, I believe was that on those particular products we all, at least we were anxious to make a reasonable margin

of profit. It certainly was never large. It was more from an orderly marketing standpoint, I would say, sir.

Q. Was it with the object of arriving at a uniform price as between the manufacturers?

A. I imagine that was the objective.

Q. How was this information exchanged, that is, was it by telephone or was it at meetings, or was it by letters or memoranda or what were the media?

A. It could have been either by telephone or, as you refer to, a memorandum. I question if the information to any extent on a tender was discussed at a meeting.

Q. And has that practice been going on in the industry since you came into the wire and cable business in 1930, this exchange of information on special tenders or on tenders?

A. I believe it has.

Q. I think you said that you did not believe that the quotations on tenders had been discussed at meetings to any large extent at any rate. Is that correct?

A. Yes, sir.

(Evidence, pp. 1469-1470)

The evidence further establishes that proposed changes in base prices, resulting most frequently from changes in the price of copper or of lead, were discussed by telephone communication between the representatives of the interested companies. (Evidence, pp. 1743-1744, 1932-1933). Information on map freight rates, the appointment of jobbers and list prices was also exchanged by telephone. (Evidence, pp. 217-218, 716, 1580, 1760-1761, 1804-1805).

At times meetings of manufacturers' representatives were called by telephone as well as by memoranda. (Evidence, pp. 1326-1327, 1599).

5. Preparation and Distribution of Price Data

The evidence establishes that Northern Electric for many years not only provided, in the person of K. P. Macpherson, the co-ordinator of the activities of the companies acting as a group but also that prior to 1950 it had the responsibility of preparing basic price figures for most wire and cable products and of acting as a clearing-house for price information on such products. It appears to have been the established practice for Northern to make cost studies and to prepare suggested prices based on such studies as well as on market considerations, such as the laid-down prices in Canada of competitive products

manufactured in the United States or elsewhere. The suggested prices were then submitted for consideration, chiefly through the medium of circulating memoranda, to the other interested manufacturers. The latter submitted their views; differences were reconciled; and common prices were agreed upon. It was then the function of Northern Electric to circulate memoranda setting out the agreed prices to all interested parties. These memoranda usually indicated the date upon which the prices were to become effective. As a result of this procedure the published price lists, which most of the companies issued to their customers, contained identical prices for the products to which this arrangement applied.

With respect to products not manufactured by Northern Electric or on which patents were held by other companies, the manufacturer concerned prepared the necessary cost studies and suggested prices to be used as the basis for discussion by means of circulating memoranda. After agreement had been reached on common prices, Northern Electric took over and circulated the memoranda setting out these prices, with effective dates where applicable, as outlined above.

Since 1950, Northern Electric has not been the clearing-house for price data to the same extent as formerly. At a meeting of the companies held early that year, agreement was reached upon a greater degree of participation by the other manufacturers in the preparation of prices. (Exhibit 304). Northern was relieved of the responsibility of doing the bulk of the work by an arrangement allocating the responsibility for the pricing of certain products to the other manufacturers. Cost studies have been made as before and suggested prices submitted by memoranda to competitors. The prices were then agreed upon and adopted as under the old system.

In connection with the foregoing procedure K. P. Macpherson, of Northern Electric, said:

Q. In your experience in the Northern Electric, particularly when you were assistant sales manager and later as sales manager, and from what you have told us yesterday and again today, there is an interchange of information between the manufacturers. You will admit that, I take it?

A. I would be silly if I did not.

Q. And you exchange price lists and price sheets; you discuss at meetings prices, amongst other things; that is correct?

A. That is correct.

Q. And from what you have previously said, in arriving at the prices at which you are going to sell your products, you take into consideration what your competitors' costs are?

A. I do not see competitors' costs. I see my own costs and I judge the prices I am willing to accept by our own costs. They know what their own costs are and they have to make the same decision.

Q. Perhaps you do not know what their costs are, but you do know what their proposed selling price is on some of the products because they send you studies?

A. They send price lists they would like to see adopted.

Q. You would send studies to them or they would send them to you, or you were forwarding studies to them so that you would have them to consider when they were preparing their prices?

A. Yes.

Q. In cases when you exchanged memoranda or at meetings you asked each other for comments on proposed prices?

A. Yes.

Q. You asked for reaction to suggested prices?

A. Yes.

(Evidence, pp. 114-115)

In answer to questions on certain cable prices sent out by Northern Electric (Exhibit 26), Mr. Macpherson said:

Q. Did you also act as clearing house for price information?

A. In some cases, yes; in some cases, no.

Q. Who did?

A. Other manufacturers.

Q. Who?

A. Canada Wire and Cable does some things; Canadian General Electric some.

Q. By that I take it you mean on some types of wire and cable or wire and cable products they prepare the price information?

A. They do the necessary studies and so on.

Q. Then on other things Northern Electric would do it?

A. Yes.

Q. In the case where the studies were prepared, say, by Canada Wire and Cable, would they then send you the result of their studies?

A. They would.

Q. Then would you subsequently issue price sheets?

A. Not necessarily.

Q. In some cases did you?

A. Not of theirs. They issued their own.

Q. If they sent the sheets after they had prepared the studies, they would send them to you?

A. Not all of them.

Q. In some cases they would send price sheets out to the manufacturers which they had prepared and say, "Here are the cable prices"?

A. Correct.

Q. Which is exactly the way you appear to have done in Exhibit 26?

A. Yes.

Q. And you would receive a copy of those prices?

A. This is correct.

Q. And all the other manufacturers would?

A. That is correct.

Q. Were these prices put into effect by your company when received?

A. In most cases, yes. If we wanted to argue about some of them we would argue about them.

Q. Was it the practice in sending out these price sheets to allow two or three days before they went into effect in order to have the other manufacturers raise such complaints as they might wish to?

A. No, I don't think so.

Q. In the case where you received certain prices prepared by, say, Canada Wire and Cable, and in a case where you might not agree with the figure which they had prepared, what action would you take?

A. I would discuss the matter with them.

Q. With a view to what; having them change their figure, is that what you were after?

A. That was what was discussed.

Q. In discussions with them would you do that by memoranda?

A. Perhaps not.

Q. Would you do it by telephone call?

A. It could be done by telephone discussion. It could be done by a visit.

Q. If you were objecting to some of these prices prepared by one of the other manufacturers and you were raising your objection through a memorandum, did you send that memorandum on a circulating system to those other companies which would be concerned?

A. I would think so, yes.

Q. Do you remember doing it?

A. In instances I remember doing it.

(Evidence, pp. 86-88)

T. J. Bell, of Federal Wire and Cable, explained the practice in the industry prior to 1950, as follows:

Q. Prior to this allocation by the manufacturers on January 24, 1950, who prepared prices for what products?

A. To the best of my memory Northern Electric Company prepared most of the prices. They have been the established leader in the wire and cable field since the turn of the century and their prices were usually adopted by practically all the people in the business. They have the largest plant and have the largest output and they had the greatest distribution. I would say that all phases of their costs have been more economical than any one else's for the last few years. It does not necessarily mean that all the manu-

facturers adopted their prices, but I think most of them did. If they did not, they could not sell.

(Evidence, p. 1895)

The practice of the industry in the matter of the interchange of price information with Northern Electric acting as the clearing-house was confirmed by various witnesses. (Evidence, pp. 303, 849, 859, 888, 1282-1283, 1382, 1464, 1539-1540, 1563-1565, 1644-1645, 2017).

The new allocation of pricing responsibilities was arranged at a meeting held on January 24th, 1950. (Evidence, p. 1894). A memorandum on this meeting, prepared by T. J. Bell, of Federal Wire and Cable, and sent to G. W. Arnold, of Boston Insulated Wire and Cable (Evidence, pp. 1892-1893), set out the new arrangement in detail, as follows:

4. The pricing set-up is to be taken care of in the following manner:-

AC and ACL	-	Canadian Triangle
Rubber Covered Wire) Type "T" Wire) Flexible Cords) etc.	-	Northern Electric
Paper Power Cable) Weatherproof Wire) Annunciator Wire)	-	Phillips Electrical Works
All magnet wire) Bare Wire) Automotive Replace-) ment Cable)	-	Canada Wire and Cable Company
Varnished Cambric,) Asbestos and) Lead Covered Wire)	-	Canadian General Electric Company
Cord Sets	-	Federal Wire and Cable Company

In future all companies will be responsible for price changes and for adequate price information on these commodities.

(Exhibit 304)

Examined on Exhibit 304, Mr. Bell said:

A. I would claim it is mine. I think it is. It is signed with an "S", which obviously identifies it as a document originating in the Federal Wire and Cable Company.

Q. You mentioned that you have attended meetings and subsequently made notes for your own use?

A. Yes.

Q. Does this document represent the notes that you made following a meeting?

A. Since it is on the file number of the Boston Insulated Wire and Cable Company, I would say that it is notes that I made and sent to Mr. Arnold who had not been able to be present at the meeting, to give him some guide as to what was discussed. It is not a normal thing for me to do so.

Q. Would you refer to Item No. 4, please?

A. Yes.

Q. Could you explain what is meant by the pricing set-up to be taken care of in the following manner?

A. Yes, I would say that this item refers to the manufacturers who are predominant in the various fields. For example, AC and ACL, I would say the largest producer in the industry is Canadian Triangle, and since they are the largest and most efficient producer they were given the job of conducting cost studies and arriving at a most economical price that AC and ACL would be sold. Their prices were sent to other people and if they choose to adopt them, that was O.K., and if they did not, that was all right. That is true with each group. These people happened to be the leaders in that particular phase of the industry. I say they are the largest producers and the most efficient and their costs would determine the selling price. Other people, if they chose to adopt them, that would be fine, and if they did not choose to adopt them, that was fine. It is indicative of the breakdown of the industry into groups.

Q. That is, I take it then, the allocation that was made at a meeting held on January 24, 1950?

A. I would say yes. You see, one of the reasons that give rise to that was that sometimes you were dissatisfied with the prices we had and the people that had the most experience with producing different types were certainly the people to do the work on them.

Q. Have there been any changes in this allocation since January 24, 1950?

A. To my knowledge, no.

Q. I take it then the only product that your company was allocated was cord sets?

A. That is true. As a matter of fact, almost all the manufacturers except ours have gone out of this business because it is uneconomical.

Q. I take it that the other manufacturers are more efficient, to your knowledge, in the other lines than you are?

A. I would say that, except regarding magnet wire only we are as efficient as anyone, but we were not the largest producer. Canada Wire is the largest producer.

(Evidence, pp. 1892-1895)

L. G. Lumbers, of Canada Wire and Cable, said:

Q. Does this refer to an allocation or division of responsibility as between the various companies for the preparation of price information on the products referred to opposite each name?

A. What we undertook here was to do all the pricing and pricing cost studies on bare wire and automobile wire. Our company would make price studies and continual checks and that would be our responsibility.

Q. Would that responsibility also involve advising your competitors of the results obtained from these studies?

A. That is right.

Q. Would that also involve forwarding to your competitors these proposed prices which we referred to earlier this morning?

A. Yes.

Q. Do you know whether any change in this allocation or division of responsibility has been made since June 24, 1950, or since your meeting?

A. To the best of my knowledge these things are still in effect.

(Evidence, pp. 1795-1796)

J. H. Pryce, of Canada Wire and Cable, said:

MR. HUNTER: Q. Mr. Pryce, at the present time in the wire and cable industry is there a division of responsibility as between companies for the preparation of price information on certain products?

A. Yes.

Q. I show you Exhibit No. 304, and would draw your attention to Item No. 4 which appears at the bottom of the first page and the top of the second page. This document is dated January 24, 1950. Do you recall attending a meeting or meetings of manufacturers at which this subject came up for discussion?

A. That is right.

Q. As a result of that meeting was it agreed that the companies indicated would prepare price information for the products indicated opposite their respective names?

A. Yes.

(Evidence, pp. 1810-1811)

A. A. Wagman, of Industrial Wire and Cable, which company was not represented at the meeting of January 24th, 1950, and to which no responsibility for the preparation of any price information was allocated, said:

Q. Were you surprised at not being invited to a meeting at which a division such as this was made?

A. I am not surprised at anything, Mr. Hunter.

Q. I take it from what you have stated, Mr. Wagman, that you do not know on what basis this division was made: that is, why, say, Phillips would be responsible for the item indicated or why Northern would be responsible for the item indicated?

A. I would imagine because they must be the largest producer of that particular product.

Q. I see. Has there been any change in this division since this document was written? I think you have indicated there was non-metallic sheathed cable which was now Cables, Conduits and Fittings.

A. Well, there must have been at that time too because no one else had it.

Q. I see, but you manufacture non-metallic sheathed cable now, do you?

A. We always have, right from the beginning.

Q. Now, have you during the last two years been receiving advice from the companies indicated with respect to the products indicated in this item No. 4 of Exhibit 304?

A. Well, AC and ACL, yes, TW yes; non-metallic, yes; weatherproof wire, no; and bare wire, no, because we have just been manufacturing the past year.

Q. From whom do you receive advice on weatherproof wire?

A. I believe it would be Phillips Electrical.

Q. I see, and in the case of bare wire?

A. Canada Wire and Cable.

Q. But the reason you qualify that is because you have just come into production?

A. That is right.

Q. Of those two items during the last year, so that you have only had the advice from them for the last year?

A. That is true. I wouldn't have any knowledge prior to that.

(Evidence, pp. 2007-2009)

The allocation of pricing responsibilities for the different products of the industry was confirmed by other witnesses. (Evidence, pp. 178-180, 523-528, 598-601, 980-982, 1381-1382, 1520-1521, 1629-1630).

The parties to whom Northern Electric mailed pricing information and the products with respect to which price sheets were sent to them are listed in Exhibit 146, entitled "Master Book Mailing List Index" and dated November 19th, 1951. The recipients are designated by initials, and were identified by S. H. R. Clish, of Northern Electric. (Evidence, pp. 555-558). Mr. Clish also identified a stock of pre-addressed envelopes in which the price sheets were to be sent to competitors. (Exhibit 147, Evidence, pp. 558-559).

6. Summary

The basic policy of price uniformity and the related policies and practices of the wire and cable companies, as outlined, have produced the results which they were designed to produce. These results were set out in the testimony of T. A. Lindsay, vice-president and general manager of Automatic Electric, as follows:

Q. I am speaking now of your list prices. You have certain products that are referred to as standard products and you have price cards. Are the prices on these price cards the same as the other manufacturers for the same type of product?

A. In general, the list prices are.

Q. What about power cable prices; are the Phillips' power cable prices the same as the other manufacturers?

A. In general, yes.

Q. Are the zoning list prices for your product in a certain zone the same as other manufacturers for the same zone?

A. Yes.

Q. Are the Phillips' map freight rates the same as other manufacturers for a similar product for similar destinations?

A. I couldn't be too sure, but I would presume so.

Q. In the cases of tenders for special types of products, the type of tender that you have referred to as having to be sent to Phillips head office for determination, does that price correspond generally as the same price as other manufacturers tender on the same bid?

A. Yes, in general.

Q. On the question of the appointment of a firm to act as a wholesaler is there a standard list or a recognized list of wholesalers which all the manufacturers use?

A. There is such a list.

Q. Do you as General Manager of the sales company, that is, Automatic Electric Company follow that list in selling to wholesalers?

A. In general, yes.

Q. Does the Automatic Electric Company ever appoint a wholesaler without reference to whether he is going to be recognized by the other manufacturers as a wholesaler?

A. We have done so.

Q. As a practice, do you?

A. Not as a general practice.

Q. In the case of the appointment of an agent do you refer to any standard list of agents or a recognized list of agents, or do you appoint your own agent without reference to what the other manufacturers do?

A. We appoint our own agents without reference.

(Evidence, pp. 711-713)

Q. Is it a fact that these prices and these policies with regard to tenders, the appointment of wholesalers, the appointment of agents, cash discounts, jobbers' discounts, that this practice is the same between manufacturers by design or by chance?

A. I would say by design.

Q. How were the agreements as to this uniformity worked out; were they through meetings?

A. Usually.

(Evidence, p. 714)

Q. Were these various subjects to which we have referred this morning discussed at these meetings?

A. Yes.

Q. As a result of the discussions which have taken place at either one meeting or more than one meeting were decisions made or agreements made with respect to these various practices?

A. Yes.

Q. Were letters or memoranda exchanged between the various manufacturers with regard to any of these subjects?

A. I have seen some.

Q. To your knowledge, was information sometimes exchanged through telephone calls?

A. Yes.

(Evidence, pp. 715-716)

III. AGREEMENTS OR ARRANGEMENTS ON PRICES

1. Footage Materials

All or nearly all wire and cable products sold on a footage basis are manufactured and stocked by each of the manufacturers and sold at delivered prices which have been established for seven zones across Canada.

The evidence shows that agreements or arrangements on the prices of footage materials have generally been made by the wire and cable companies with respect to each individual product as the occasion arose; that price changes have not been as frequent as in the case of tonnage materials; and that, when agreement on such changes has been reached after an exchange of pricing information by circulating memoranda, telephone communication, or at meetings, copies of the prices agreed upon have been circulated to all interested manufacturers and used to prepare published price sheets.

The practice of circulating memoranda to competitors for purposes of exchanging price information, discussing and agreeing on or arranging for price adjustments in the interests of uniformity, and calling meetings to effect these ends, has been in operation for many years. For example, in a memorandum dated February 17th, 1933, and circulated to T. A. Gass, of Canada Wire and Cable, H. Balfour, of Phillips Electrical Works, J. C. Keenan, of Canadian General Electric, G. W. Arnold, of Boston Insulated Wire and Cable, and J. G. Smith, of Federal Wire and Cable, K. P. Macpherson, of Northern Electric, wrote:

> I would suggest that the prices on Slow Burning Fixture Wire be brought in line with AF and AFC prices in that they are used for the same class of work, and if anything our costs on Slow Burning Fixture Wire are higher than those on AF and AFC.
>
> (Exhibit 7, p. 2)

Mr. Macpherson circulated other memoranda to the same parties in 1933, including the following:

On March 13th, 1933:

> I think it would be convenient to have the meeting as suggested in your letter of March 10th in Toronto sometime during the week of March 20th. If you will obtain the suggested date from Mr. Dobson and let us know as quickly as possible, we will try to fix it conveniently.
>
> By that time we hope to have a suggested cure for the entire zone discrepancies which exist in the West.
>
> (Exhibit 7, p. 3)

On May 12th, 1933:

Having given some further consideration to the question of our Type S and SJ prices we think it will be necessary to take cognizance of the published U. S. prices on the smaller sizes of type S as well as of type SJ.

It would be our idea to have four types as listed on the attached sheet, but the type S Light would be made in 2 conductor sizes 18, 16 and 14 only, and the remaining portion of the set-up would be as previously outlined.

We would like your opinion at the earliest moment.

(Exhibit 7, p. 6)

On August 21st, 1933:

It is our understanding that to arrive at a price on 3 Conductor #1 B&S Gauge Type S Cab Tire Cable we would interpolate between a 3 Conductor #2 and a 3 Conductor #1/0, which gives a price of $647.50, f.o.b. Winnipeg. Apparently someone does not agree with this method. Please advise.

(Exhibit 8, p. 1)

On July 11th, 1934, Mr. Macpherson advised the other companies by memorandum of new competition from Cables, Conduits and Fittings, as follows:

Mr. Longtin called upon us yesterday and informed us that his firm was manufacturing Rubber Covered and Braided Code Wires in all sizes up to 500,000 c.m., that they had been building up stocks for some weeks and were about ready to approach the jobbers.

He asked us to supply him with the necessary commercial information in order that he might function along recognized lines. There seems to be no other course than to fully advise him on the matter and secure his co-operation but no action will be taken until we get an expression of opinion from you.

. . .

(Exhibit 8, p. 6)

This advice brought the following replies by way of circulating memoranda:

From T. A. Gass, of Canada Wire and Cable,
July 12th, 1934:

Replying to K. P. M's memo of the 11th instant. I presume there is nothing we can do except to fall in line and make the best of a bad job and have Mr. Longtin maintain our standard resale.

(Exhibit 109, p. 4)

From J. G. Smith, of Federal Wire and Cable,
July 12th, 1934:

I beg to acknowledge receipt of Montreal's memo of the 11th instant and I feel that Mr. Macpherson is taking the right action in giving the Cables, Conduits and Fittings, Limited all the necessary information.

(Exhibit 109, p. 5)

From R. H. Balfour, of Phillips Electrical Works,
July 13th, 1934:

Referring to K. P. M's. memo of the 11th instant, we are of the same opinion as Guelph and Leaside, that it seems there is nothing we can do except advise the above fully on our Rubber Covered wire set-up, on the basis of their agreeing to adhere to our established prices and methods of sale, in view of the fact that they are now manufacturing all sizes of Rubber Covered Wire up to 500,000 CM., of which they now have a considerable quantity of stocks ready to put on the market.

(Exhibit 109, p. 3)

From A. S. Edgar, of Canadian General Electric,
July 17th, 1934:

Referring to K. P. M.'s memo of July 11th, it would seem that there is nothing much we can do about the situation. I assume, however, that in giving them the commercial information required they have made a definite verbal commitment at least to adhere to the prices and policies established.

I would be inclined to doubt that they are now making all sizes up to 500,000 c. m. although there seems to be conclusive evidence that they are at least making the smaller sizes.

(Exhibit 109, p. 2)

This inter-change of memoranda illustrates the basic price policy of the companies, that is, agreement to adhere "to our established prices and methods of sale". While the manufacturers were apparently not in a position to prevent a company from entering upon the manufacture of a competitive product, they felt that they could withhold

certain "commercial information" from such competitor unless he agreed to adhere to the prices and other policies established by the industry.

That the price sheets issued by the companies were the subject of prior discussion among the companies is shown by the following memorandum of February 21st, 1935, circulated by Mr. Macpherson:

Radio Hook-Up Wire
Price Sheets #59.2 and #59.3

Before issuing any further price sheets we would like to discuss this matter.

(Exhibit 9, p. 1)

On July 30th, 1936, Mr. Macpherson advised his competitors by memorandum as follows:

Attached you will find the proposed new prices on Flexible Cords, made necessary by the appraisals dated July 17th, which are now in effect.

Will you please review these prices and let us know your wishes by return mail.

(Exhibit 10, p. 1)

This memorandum illustrates the practice under which the mechanical work in the preparation of prices was for many years performed by Northern Electric. The suggested prices were circulated to the other manufacturers for their comments. When agreement was reached, the new prices were issued by Northern to its competitors.

In circulating a memorandum of August 11th, 1936, dealing with rubber covered wire and cable, C. S. Leary, of Canadian General Electric, commented as follows on prices suggested by T. A. Gass, of Canada Wire and Cable:

We are in accordance with the suggested resale as outlined in T.A.G's memo of the 7th at the same time we would like to see prices made effective immediately if at all possible.

(Exhibit 14)

On October 15th, 1936, Mr. Macpherson advised the various manufacturers that certain prices on cord sets were being cancelled because they were no longer competitive.

We are today cancelling the prices on cord sets, sheets #35, 36, 36.1 and 37, due to the fact that they are no longer competitive with sets sold by device manufacturers and importers.

(Exhibit 13, p. 2)

In this connection, C. S. Leary, of Canadian General Electric, in a memorandum of October 19th, 1936, circulated to the other manufacturers' representatives, wrote:

> . . .
>
> We would like to recommend that a study be made in an effort to have new prices established without delay, including in addition to the items covered by the above sheets, 2/18, 1/64, and 1/32, PO SJ midrip cord, and 2/16 ditto.
>
> . . .
>
> Accordingly, we would appreciate it if the other interested parties would pass their comments along to K. P. M. in an effort to have this situation adjusted promptly.
>
> (Exhibit 13, p. 1)

It will be noted that Mr. Leary was following the practice of the industry in advising the interested manufacturers to forward their comments to Mr. Macpherson of Northern Electric in order that the situation arising from the cancellation of certain prices be "adjusted promptly".

On April 6th, 1937, Mr. Macpherson advised the other manufacturers by memorandum of certain new prices, as follows:

> Attached are new prices on non-metallic sheathed cables, code wires, flexible cords, which we propose to put in effect on April 9th.
>
> You will notice that it has been necessary on non-metallic sheathed cables and code wires to take cognizance of import at Vancouver since U. S. manufacturers are selling these items at one price anywhere in the United States.
>
> (Exhibit 15, p. 17)

On October 8th, 1937, Mr. Macpherson invited representatives of other manufacturers to a meeting to discuss prices of non-metallic sheathed cable and other products. He wrote:

> There will be a meeting of the A. B. C. group, in Montreal, on Wednesday, October 13th, in the fore noon.
>
> It is proposed immediately after this meeting to discuss non-metallic sheathed cable and in the afternoon other types of wires and cables.

We trust you will be able to be present at the latter two meetings.

LSA/GT

(Exhibit 15, p. 19)

The initials LSA/GT on this memorandum show that it was sent to Messrs. Leary of Canadian General Electric, Smith of Federal, Arnold of Boston, Gass of Canada Wire, and Timmons of Phillips. The meeting apparently reached agreement on zone prices for non-metallic sheathed cable. In a memorandum dated December 1st, 1937, Mr. Macpherson advised as follows:

Attached you will please find proposed revised prices and re-arrangement of zones on non-metallic sheathed cable.

This revision was necessary because of some drastic price reductions in the United States and the adoption of a zoning system for this product.

(Exhibit 15, p. 1)

It will be noted that the revised prices were influenced by price changes in the United States. The competition offered by products manufactured in the United States frequently necessitated a review of prices in Canada. For example, on December 15th, 1937, T. A. Gass, of Canada Wire and Cable, circulated the following memorandum.

I enclose herewith comparison of our price list on Rubber Covered Wires and Cables with the new list which became effective in the United States on December 8th.

I have not filled in any proposed prices and would suggest that the prices remain as is, until after the 1st of the year, when, I understand, we will all get together and have an opportunity of discussing these, as well as other matters.

(Exhibit 348, p. 1)

On February 10th, 1938, Mr. Gass circulated the following memorandum:

I enclose herewith, tabulations showing comparison of present-day prices in the United States based on their list effective February 7th compared to our present price in Canada.

In view of the fact that the price level in the United States is now so low, I would like to suggest that we do not make our list price such as to equal the American laid-down price, but rather that we should have it 5% above the American laid-down price, so

that after deducting our discount of 5% from the list, our net cost to Jobbers would equal the American import. This, I believe, would fully take care of the question of imports and be on a better basis for us as manufacturers.

(Exhibit 348, p. 2)

On February 11th, 1938, Mr. Smith of Federal, replied, in part, as follows:

I have G's memo of the 10th instant with attached tabulation of prices and I am quite in accord with his suggestion regarding the method by which these are figured. I believe that if our jobbers prices are in line with the American import that is all we need to take into consideration with regards to our set up.

. . .

(Exhibit 391, p. 1)

On May 23rd, 1938, Mr. Gass submitted a suggested revision of prices for radio hook-up wire by memorandum for the approval of the other companies, as follows:

After considerable study of the Radio Hook-Up Wire prices, we have come to the conclusion that our prices as presently constituted are considerably higher than the Import.

We, therefore, attach hereto, our suggested revisions of Sheets 59.2 and 59.3 covering this material and suggest they be adopted immediately if found satisfactory.

(Exhibit 348, p. 3)

On October 4th, 1938, P. A. Timmons, of Automatic, circulated the following memorandum to Messrs. Gass of Canada Wire, Macpherson of Northern, Leary of Canadian General Electric, and Brackinreid of Phillips:

As you no doubt know, effective September 27th prices on Rubber Covered and Braided Wires were raised in the States and I am attaching herewith a study showing laid down prices as against our present list and jobbers prices.

My thought is that our present Zone No. 1 list should be raised to equal the import prices. In the case of 14 gauge this would mean an increase over our present list of 15¢ per 1,000 ft., not very much you will appreciate, but my thought is that if these prices were increased by small amounts there would not be so much tendency on the part of the trade to overstock.

(Exhibit 239, p. 2)

In a memorandum of November 9th, 1938, to the other manufacturers, enclosing suggested prices for heater cord sets, C. S. Leary, of Canadian General Electric, said:

. . .

> Will you please review these prices at your earliest convenience and advise whether or not they are acceptable to you. In the event that they are acceptable, then indicate the date you would like to see them made effective.

. . .

(Exhibit 324, p. 1)

The suggested prices were apparently revised and on November 18th, 1938, Mr. Leary wrote another memorandum which said, in part, as follows:

. . .

> Attached is a revised price list giving the established prices for the two zones.
>
> After you have had an opportunity of reviewing this, will all parties receiving a copy of this memo advise by November 24th, if they are agreeable to adopting this resale effective November 28th.

(Exhibit 324, p. 5)

Agreement having been reached, Mr. Leary advised the other manufacturers by memorandum dated December 7th, 1938, as follows:

> Mr. Graham informs me that at an industry meeting yesterday, it was decided to adopt the prices attached to my memo of November 18th and make them effective December 8th.
>
> In view of the replies received, I take it for granted that these prices are acceptable to the parties receiving a copy of this letter, and that you will quote similar prices when called upon to do so.

(Exhibit 324, p. 8)

Examined on these documents, Mr. Leary said:

MR. HUNTER: Q. Mr. Leary, when price increases or decreases were discussed by the manufacturers and where it had been agreed or arranged that a certain decrease or increase in a particular product would be made, was there also agreement between the manufacturers as to the effective date of the increase, during the period that you were actively associated?

A. That is correct, there was.

Q. And what was the reason for agreeing on the effective date of the change?

A. I assume that we would all be the same, that is all.

Q. Otherwise if you did not, I suppose one manufacturer would get the jump on the others?

A. Yes.

(Evidence, p. 1497)

The importance of the arrangement among the manufacturers as to the effective date for price changes is shown by the following two memoranda by Mr. Leary, dated November 14th, 1938, and November 16th, 1938, respectively:

Re Increased Prices

We have rumours from the field that some wire manufacturers have indicated to the trade that wire and cable prices will advance on a specific date, namely, November 17th. We are investigating these rumours and, if found to be correct, we reserve the right to delay putting the increases into effect in order to put us on a comparable basis.

According to our mutual understanding, we have refrained from advising anyone in our organization, either directly or indirectly re the contemplated advance.

(Exhibit 324, p. 3)

Re Increased Prices

Further to our memo of November 14th, we have decided in this instance, after discussing this matter with several interested parties to mail our sheets tomorrow, November 17th, as originally agreed.

We still feel, however, that this should be brought up for discussion at the first opportunity.

(Exhibit 324, p. 4)

Further evidence of the procedure for reaching agreement on prices by an exchange of memoranda among the manufacturers is found in a number of such memoranda dated in late 1938 and early in 1939. T. A. Gass, of Canada Wire and Cable, had issued proposed new prices

for radio hook-up wires. In this connection a memorandum from J. G. Smith of Federal Wire and Cable, dated November 23rd, 1938, reads as follows:

> We have G's memo of the 19th instant, re the above and have gone over the proposed set-up and I find that we can hardly agree with the additions as proposed for cotton braids.
>
> Upon checking these additions over with our costs, we find that they should be increased considerably as in many instances these braids actually cost us more than the prices set out on the sheet.
>
> I would appreciate it very much if someone other than ourselves would make this study, and we should be very pleased to supply our findings if so desired.
>
> (Exhibit 391, p. 4)

On the same matter, C. S. Leary, of Canadian General Electric, circulated the following memorandum on November 24th, 1938:

> Acknowledging G's memo of the 19th, we are conducting a study of our cost on several items, and would appreciate an opportunity of completing our study before accepting the prices.
>
> At the same time I assume that whatever advanced price is decided upon, it will not become effective until around the middle of December, when the production for this year will be practically completed.
>
> (Exhibit 324, p. 7)

On January 10th, 1939, Mr. Leary wrote further on this matter as follows:

> Referring to T. A. G. 's memo of November 19th I find where we replied under date of November 24th, requesting an opportunity to compare our costs with the proposed prices on this material.
>
> Unfortunately, we neglected commenting further, and I now find that the prices submitted are satisfactory to ourselves.
>
> As we feel that any change in price should be made effective at once, I would like to suggest that the parties receiving a copy of this memo pass along their comments to K. P. M. in order that a decision can be arrived at, either to maintain the present price level, or to adopt a higher schedule, as proposed.
>
> (Exhibit 324, p. 10)

On January 12th, 1939, Mr. Smith wrote again, as follows:

> The revisions on the above prices suggested by G. in his memo of November 19th, will be quite satisfactory to us, and we would also like to see them go into effect at once.

(Exhibit 391, p. 6)

Agreement on the proposed new prices for radio hook-up wire having been reached in the customary way, on January 16th, 1939, Mr. Gass wrote and circulated the following memorandum:

> In view of the comments received from those interested, we assume "Mac" will have the prices which we sent to him with our letter of November 19th, established immediately.

(Exhibit 348, p. 7)

"Mac", referred to in this exhibit, was K. P. Macpherson of Northern Electric, who, according to the evidence, exercised the function of advising the interested manufacturers as to the prices on which agreement had been reached.

On January 17th, 1939, C. S. Leary, of Canadian General Electric, circulated the following memorandum:

> Replying to Pat's memo of January 5th, it has been our policy to add the extras to the scheduled prices for wire and cable and then deduct any discounts that may apply.
>
> So far as we are aware, this is the procedure being followed by the other companies. However, if we are incorrect, we will immediately change our policy.
>
> May I suggest that M issue a ruling on this point.

(Exhibit 324, p. 11)

"Pat" was P. A. Timmons, of Automatic Electric, and "M" was K. P. Macpherson, of Northern.

On January 20th, 1939, Mr. Leary wrote the following memorandum on suggested prices for service-entrance cable:

> Acknowledging T's memo of the 18th, we agree that it is desirable to have prices established for 2/8 and 1/10 service-entrance cable.
>
> The price suggested is satisfactory to us and we assume that M will have prices established for all zones.

(Exhibit 324, p. 12)

In reply to this memorandum, Mr. Macpherson wrote on January 27th, 1939, as follows:

> The new price as suggested is agreeable and will be published.
>
> (Exhibit 15, p. 7)

Common action among the manufacturers is illustrated by the following memorandum of February 4th, 1939, from P. A. Timmons, of Automatic, to T. W. Brackinreid, of Phillips:

> Referring to the present situation in respect to McKinnon Industries Limited, when they were advised that on their requirements of wires for commercial motors they would be compelled to pay the same price as other manufacturers, they immediately said that they would import all their wire requirements.
>
> Mr. Gass made a study of U.S. prices on three sizes and I attach herewith a list showing Mr. Gass' study, which will clearly indicate that this customer cannot import at lower prices than he is now enjoying.
>
> Mr. Gass proposes to visit these people, accompanied by Mr. Greenshields, on Monday next and will advise us the result of his visit.
>
> (Exhibit 244, p. 2)

In 1939 Canadian General Electric sought agreement on an increase in price for Type CF cord. A memorandum from Mr. Leary, dated April 10th, 1939, reads, in part, as follows:

> . . .
>
> Our costs indicate that this product should sell for a higher price and if you will recall it, we have brought this matter up for discussion at two different meetings, but we did not receive any support.
>
> If G is willing to sell his lacquer-finished product at the cotton braid price, we will be only too willing to co-operate in establishing a similar price for the CF plain brown, provided this meets with the approval of the other companies.
>
> We concur with his suggestion that the selling price of this product can be increased.
>
> (Exhibit 324, p. 13)

J. G. Smith, of Federal Wire and Cable, agreed with Mr. Leary stating in a memorandum dated April 11th, 1939, that:

. . .

> Our costs also indicate that this material could stand a higher price and we agree that the selling price should be increased.
>
> (Exhibit 391, p. 9)

In an earlier memorandum, dated February 21st, 1938, Mr. Smith refers to an instance where Federal Wire and Cable could not meet the agreed price because of higher costs. Writing with respect to the price of asbestos range wire, he said:

> I quite agree with G's memo of the 21st instant re set up on Asbestos Range Wire. We have never run into a price as low as $22.41 on #8 as our lowest price to-day is $34.10, which is just a little higher than G's.
>
> Any time we have discussed this question, it seems that our process of manufacturing is somewhat more expensive than that of other interested parties and we have never really been able to get down to the same price level. However, we are willing to again endeavour to meet this situation.
>
> (Exhibit 391, p. 2)

In May 1939 a reduction in code wire prices in the United States led to negotiations among the Canadian manufacturers for agreement on a price revision in Canada. On May 25th, 1939, K. P. Macpherson, of Northern, circulated the following memorandum:

> On May 15th, Code Wire prices in the United States were materially reduced and the price sheets have been given a fairly wide circulation. We, therefore, consider it imperative to put new prices into effect with the least possible delay.
>
> The sheets attached show prices which are about 5% above the import price, which we consider should cover the situation.
>
> We would like to hear from you by return mail and will then notify the date on which we will make these prices effective.
>
> (Exhibit 15, p. 11)

On May 26th, 1939, C. S. Leary, of Canadian General Electric, replied as follows:

> In reply to M's memo of the 25th, we are in accord with the proposed revision, but would suggest that the price of #14 H. C. S. B. wire be shown as $6.80 for zone 1 in place of $6.40.
>
> In explanation of our suggestion, we realize that this is considerably higher than import, but the other prices would be reduced reasonably in line with import and it, therefore, would not be profitable for any concern to undertake the importation of this one item.
>
> We are offering this suggestion for your consideration.
>
> (Exhibit 324, p. 18)

On the same day, T. A. Gass, of Canada Wire and Cable, wrote:

> Replying to Mac's memo of the 25th instant, we quite approve of his suggested prices for Code Wire and we have stopped to check same and find the situation exactly as he indicates.
>
> We would, therefore, suggest that these prices be put into effect on receipt of Mac's memo.
>
> (Exhibit 348, p. 10)

The evidence shows that the policies and practices of the industry with respect to the establishment of uniform prices were substantially maintained during the war years and, as will be shown, were continued in the post-war years. In a memorandum dated July 22nd, 1940, Mr. Leary, of Canadian General Electric, wrote as follows:

> In reply to G's memo of July 18th, we find the prices submitted agreeable to us, likewise the proposed basis for quoting concerns other than Federal Government Departments and recognized Aircraft Manufacturers.
>
> We recognize the amount of work involved in setting up these prices and wish to express to G our appreciation to the members of his staff that compiled this list.
>
> (Exhibit 324, p. 21)

In September 1940 price revisions on non-metallic sheathed cable were under discussion. J. G. Smith, of Federal Wire and Cable, expressed the following views in a memorandum dated September 21st, 1940:

Since my return, I have been considering the prices that will be issued on non-metallic sheathed cable and the question has come to my mind regarding a special discount that is offered on short lengths.

I understood that this discount was discontinued but I believe it is still in vogue and I think the matter of short lengths and discounts on short coils should be cleared up at the same time as new prices are established and I believe M. should take this into consideration and have it made perfectly clear to all concerned.

(Exhibit 391, p. 12)

On January 28th, 1941, Mr. Smith wrote further on the same subject, as follows:

Attached hereto is a tabulation showing the present laid down costs of Non-metallic Sheathed Cable from U. S. A. together with the net amount received from Canadian jobbers in Zone 1. The discrepancy between these two figures is unnecessarily wide. Taking into consideration increasing costs on raw materials at present effective, plus others which we are faced with in the immediate future, our selling prices should unquestionably be stepped up considerably at once.

Our idea of the amount of this increase is shown on the right hand column and we would like to hear from you as to whether this can not be put into effect very quickly.

(Exhibit 391, p. 15)

In 1941 Northern Electric, as was the custom, prepared and circulated price studies and submitted proposed prices for approval by the other manufacturers. On February 18th, 1941, Mr. Leary sent the following memorandum to the interested manufacturers:

Acknowledging M's memo of the 14th, to which was attached a price study re performance grade and heat-resisting grade rubber-insulated and braided, we find that the proposed prices are quite acceptable to us.

It is our understanding that no advance information will be given out to the trade re this proposed increase.

(Exhibit 324, p. 22)

On May 17th, 1941, Mr. Gass, of Canada Wire and Cable, approved suggested zone prices for "SJ" light cab tire 2 and 3 conductors, as follows:

Responding to "M's" memo of the 16th instant, we are quite in agreement with the prices suggested.

(Exhibit 348, p. 16)

On May 27th, 1941, Mr. Leary wrote:

Re Type CF Fixture Cord

In reply to M's study of May 26th, the prices as suggested are satisfactory to us and we recommend their adoption.

(Exhibit 324, p. 23)

Mr. Gass also expressed approval of prices suggested and circulated by other manufacturers, as follows:

On May 27th, 1941:

Re "POSJ" Cord Sets

We are quite in agreement with the prices indicated in "L's" memo of May 22nd.

(Exhibit 348, p. 17)

On May 29th, 1941:

Replying to Mac's memo of the 26th instant the suggested prices on "CF" are on a much better basis, and are satisfactory to us.

(Exhibit 348, p. 18)

On June 26th, 1941:

Re Radio Hook-Up Wire

Sheets 59-2 and 59-3 - Manufacturers' Prices.

Responding to M's memo of June 24th we are in favour of the adoption of the prices suggested.

(Exhibit 348, p. 20)

On August 20th, 1941, Mr. Leary expressed agreement with suggested price increases on rubber insulated service wires, as follows:

In regard to M's memo of August 16th, and G's memo of August 19th, as to the extras for jute fillers, we are in agreement with the increases suggested.

(Exhibit 324, p. 24)

On December 1st, 1941, the wire and cable industry became subject to wartime price controls which remained in effect until July 1st, 1946, when a substantial proportion of the products were freed from controls. The remaining controls were removed gradually and were finally terminated on April 19th, 1947. The break in the chain of documentary evidence coincides substantially with the period of wartime controls.

In 1946 the interested manufacturers were endeavouring to reach an agreement on a price set-up for pre-assembled aerial cable. This was a special type of product for which price sheets were not available prior to this time. The product had been developed by Canada Wire and Cable (Evidence, p. 1696), but increasing demand apparently encouraged other manufacturers to make it. The policy of the industry with respect to uniform prices was then applied. The preparation of price studies and proposed prices for the product became the responsibility of Canada Wire and Cable. Pursuant to the practice of the industry, memoranda were exchanged and various proposals considered before prices and specifications satisfactory to the interested companies were worked out.

On June 14th, 1946, T. A. Gass, of Canada Wire and Cable, sent the following memorandum on self-supporting aerial cable to Messrs. Macpherson of Northern Electric, Timmons of Phillips Electrical Works, and Barnhouse of Canadian General Electric:

> We attach hereto proposed prices on the above type of Cable for your comments.
>
> (Exhibit 30, p. 1)

On July 10th, 1946, another document listing specifications and prices for this cable was received by Northern Electric. The document originated with Mr. Barnhouse, of Canadian General Electric, and presented further proposals for a price set-up. A footnote referred to Mr. Gass' memorandum of June 14th. (Exhibit 34).

In a memorandum dated July 15th, 1946, replying to the memoranda received from Messrs. Gass and Barnhouse, and circulated to the interested manufacturers, C. E. Woolgar, of Northern Electric, suggested that the companies agree on voltage ranges, insulation and other matters; that they adopt prices suggested by Mr. Gass for some types and prices suggested by Mr. Barnhouse for others; and, further, that they:

> (f) Agree on prices for complete cable, less the selling price for messenger. To the agreed price of any cable, each can then add the standard list price of the type of messenger he considers appropriate. Quoted prices for complete cable would then differ by the variation in price between the types of messenger used.
>
> (Exhibit 31)

In replying to Mr. Woolgar's memorandum, Mr. Gass advised on July 18th, 1946, that he was entirely in agreement with the suggestions made and added a further suggestion:

. . . that the specifications should go still further and include the Messenger so that we can then set up a complete price for the fully fabricated cable.

It will be understood in the meantime that we could use agreed-on prices for various types of Messenger to be added to the price arrived at for the complete cable less Messenger.

(Exhibit 32)

On September 6th, 1946, Mr. Woolgar circulated the following memorandum:

As requested, we are preparing a complete list of suggested prices for Pre-assembled Aerial Cable for 2,300 volts and for 5,000 volts, excluding the messenger, and shall issue for comment at the earliest possible moment.

(Exhibit 33, p. 1)

On September 19th, 1946, Mr. Woolgar circulated three sheets of suggested prices on pre-assembled aerial cables and asked for comments. (Exhibit 35).

The documentary evidence filed at the hearings does not cover further negotiations in this matter. When questioned on sub-paragraph (f) of Mr. Woolgar's memorandum of July 15th, 1946 (Exhibit 31), which suggested agreement on prices for the complete cable less the selling price for the messenger, T. A. Gass, of Canada Wire said:

Q. Do you know whether sub-paragraph (f) in that paragraph was adopted?

A. It was. Perhaps I might amplify that and state that so far as sub-paragraph (f) was concerned we might recommend a heavier or lighter messenger strand depending upon the recommendation of our Engineering Department in which case we would add to the cable price the price of the proposed messenger strand recommended by our Engineering Department.

Q. To that extent there was a difference in cost in the price of the messenger strand and there would be a difference in the price of cable?

A. There would.

(Evidence, pp. 1697-1698)

Early in 1947 discussions had apparently taken place on new prices for type "SJ" light cord sets. Mr. Gass prepared suggested prices and sent them to the other manufacturers for their consideration and approval. On April 14th, 1947, J. H. Fitzgerald, of Phillips Electrical Works, circulated the following reply:

With reference to G's memo of April 11th regarding the above subject, we would advise that these prices are acceptable to us.

(Exhibit 41)

On April 15th, 1947, F. W. Barnhouse, of Canadian General Electric, replied that:

The prices and additions contained in G's memo of April 11th are acceptable to us. We therefore, propose to put these prices into effect on quotations and orders immediately.

(Exhibit 42)

Throughout this period Northern Electric continued to prepare most of the price studies for the industry and to issue the price sheets after prices had been agreed upon. The sheets issued by Northern Electric were frequently referred to in memoranda as "M" series. (Evidence, pp. 122-124 and 1824-1825). It will be recalled that under the circulating memorandum system "M" stood for K. P. Macpherson. The "M" series, although issued by Northern Electric, represented prices adopted by all the manufacturers. Accordingly, representatives of the other manufacturers frequently suggested changes in "M" series price sheets. For example, on May 20th, 1947, J. H. Fitzgerald, of Phillips Electrical, in a memorandum to the other companies, proposed that Price Sheet "M" Series 8. 3. 3 be revised, and said in part:

We believe that in order to bring the price sheet up to date the descriptions should be changed as follows and new prices worked out.

(Exhibit 43)

Mr. Barnhouse, of Canadian General Electric, commented on this suggestion in a memorandum dated May 22nd, 1947, to the effect that he had no objection to the price sheet in question being revised to cover a new specification. (Exhibit 47).

Mr. Barnhouse at about this time had apparently circulated to the industry a memorandum of suggested prices for cord sets for chain stores. Mr. Gass, of Canada Wire and Cable, in a memorandum dated May 21st, 1947, commented as follows:

We are quite agreeable to the prices suggested in "B's" memo of May 19th, and would like to see a regular scheduled price sheet issued by "M's" Office to cover these items.

(Exhibit 45)

It will be noted that Mr. Barnhouse had suggested the new prices, and that Mr. Gass approved them and suggested that Mr.

Macpherson's office issue the new price sheet.

On May 21st, 1947, Mr. Gass circulated a memorandum on flexible tinned strands for insulated cables:

> We note in revising the subject price sheets that "M" has deleted a number of the extras that were formerly listed.
>
> As we frequently receive inquiries and orders for strandings not listed on the revised sheets, we should like to suggest that new sheets be issued to include the extras for strandings formerly shown.
>
> (Exhibit 46)

On June 3rd, 1947, Mr. Macpherson of Northern Electric, circulated a memorandum to which was attached a new price sheet for double braid weatherproof copper wire, as follows:

> The attached is suggested set-up for Jobbers (10% discount).
>
> Do you concur?
>
> (Exhibit 50)

In this connection Mr. Macpherson said:

Q. Having prepared this sheet, you sent it out to the other manufacturers and asked if they concurred with the proposed price?

A. That is correct.

Q. Do you know whether they did concur?

A. I don't know whether some of the figures were changed, but eventually they were published.

Q. Were the prices published the same for all the manufacturers?

A. That is correct.

(Evidence, p. 141)

T. A. Gass, of Canada Wire and Cable, said:

Q. I show you Exhibit No. 50, dated June 3, 1947. Could you identify the initialling or could you say where this document would originate?

A. It originated from the Northern Electric, Montreal, under the signature of Mr. Macpherson.

Q. Was this a product that your company manufactured?

A. We have always manufactured weatherproof wire.

Q. Do you remember around this date whether there were new jobber discounts or was this a jobber discount only with respect to this item?

A. Weatherproof is used largely by the Utilities and seldom used elsewhere. With the advent of farm electrification the demand arose for weatherproof wire for running from the nearest pole line into the farm buildings. That conductor is usually weatherproof wire. As such, weatherproof wire should be available for purchase by electrical contractors throughout the Dominion of Canada who would be doing these farm installations. The logical channel for them to purchase through would be their electrical wholesaler. On or about this time it was decided to set up a list price per 1,000 feet for this product which had formerly only been sold on a basis of price per pound. This list price per 1,000 feet included a discount of 10% to the electrical jobber for warehousing and handling this product. Would that fully answer the question, Mr. Hunter?

Q. I think it does. This was something that the industry adopted?

A. That is correct.

Q. Including the 10% figure?

A. That is correct.

(Evidence, pp. 1703-1704)

The agenda of a meeting of manufacturers' representatives held on July 9th, 1947, included the item "Weatherproof Wire - Pounds vs Feet" (Exhibit 97), indicating that the subject which had been discussed in circulating memoranda was also discussed at a meeting of the interested companies. The agenda also included type "R" wire, armoured cables and armoured lead cables. New uniform prices for these products were adopted by all manufacturers on or about July 15th, 1947.

A document listing "Proposed Decrease in Zone Prices" for standard cab tire cables was identified by Mr. Arnold, of Boston Insulated Wire and Cable, as having been issued at a meeting of manufacturers' representatives held at Montebello, Que., on September 27th, 1947. (Exhibit 293). A notation in pencil by Mr. Arnold on the document reads - "To be issued as of Oct. 15". In evidence, Mr. Arnold said:

Q. The heading on this document that we are referring to was "Proposed Decrease in Zone Prices". From what you have said, I take it that you would send this sheet out to your customers and you would put on the proposed zone prices?

A. No, I would not.

Q. Perhaps you could explain the mechanics?

A. I would simply make out our own sheet and publish it and send it out to my customers if it were agreed to by the trade.

Q. When you say you received this at Montebello was that at a meeting of the manufacturers?

A. Presumably.

Q. Had there been an agreement at that time by the manufacturers? You just finished stating that you would send it out to your customers if it had been agreed to. I was wondering if you recall whether at the meeting at Montebello these zone prices were agreed to?

A. My only answer is "to be issued as of October 15". That would indicate that they were agreed to.

(Evidence, pp. 1286-1287)

On November 27th, 1947, W. R. Greenshields, of Triangle, reported to J. E. McAuliffe, president of the company, on an industry conference to discuss the effects of the Geneva Trade Agreements. He said, in part:

> . . . As you are well aware, our prices depend to a very large extent on prices prevailing in the United States, and as a result of this 7 1/2% protection being taken away, it is bound to have an effect on our prices in Canada, particularly in the smaller sizes. Each firm has agreed to see just what effect this has according to our costs and distribution against imports from the U.S., and I would appreciate your sending me two copies of your latest price sheets with discounts so that it will enable Jack and myself to study these and make a report in two weeks, at which time we expect to have a further Meeting and decide just what items need revising.
>
> It does mean this, Jack, that on all sizes there will have to be reductions as some of our Canadian jobbers and contractors have, due to a scarcity of certain items, been importing from the States irrespective of what it has cost them, but we know that this condition will not continue forever and we must all agree to lower certain items where we find it necessary under this new tariff arrangement.
>
> So if you will kindly forward your Price Sheets just as early as possible, it will be very much appreciated.

(Exhibit 320)

In 1947, after most wire and cable products had been released from wartime price controls, price studies on different items were being made by the manufacturers. On December 15th, 1947, T. A. Gass, of Canada Wire and Cable, issued a memorandum of suggested prices for magnet wire and circulated it to Messrs. Macpherson of Northern Electric, Fitzgerald of Phillips Electrical, Barnhouse of Canadian General Electric, and Smith of Federal Wire and Cable. The memorandum reads, in part, as follows:

. . .

My suggestion is that the present extras for Double and Tinned Enamel should be left as they are.

I am making further price studies on Plain Silk and Silk Enamel but believe the general opinion is that there should be no change in these items.

As quickly as they can be prepared I will forward similar data on the Round and Rectangular Paper Wrapped Wire.

I am attaching hereto, a sheet indicating the method of calculating the base price which would indicate a new base price of 37¢ per Pound.

I assume that unless anyone objects to these suggestions that Mac will issue new sheets along the lines indicated and with the base price indicated, both becoming effective at the same time.

All of my price studies are based on special list prices and assume Mac will add the usual extra to arrive at trade prices.

It would also appear that B has not forwarded studies on Single and Double Glass Formex in types "H" and "HF" nor on Formex Cotton, all of which I assume will follow in due course.

(Exhibit 334, p. 1)

On December 16th, 1947, Mr. Gass sent out another price sheet on other types of magnet wire. (Exhibit 335).

The evidence shows that new prices and a change in the wholesaler's discount were introduced in the industry by agreement early in 1948. Some of the new prices and their proper interpretation were discussed in an exchange of letters between the branches and head office of Automatic Electric in February 1948. (Exhibit 194). In his evidence, T. A. Lindsay, vice-president and general manager of Automatic Electric, said:

Q. The subject matter of these memoranda, I take it, is weatherproof wire prices; is that correct?

A. That is right.

Q. If you would refer to the document coded EAE3-2-3, the first paragraph states:

> "At the suggestion of the Northern Electric Company a meeting was held to-day of ourselves, C. G. E., Canada Wire and Cable Company and Northern Electric Company to discuss the matter of pricing of the above types of weatherproof wire based on the new requirement that for other FOB destination points than Toronto, Montreal and Hamilton that map rate freights be added after the discount is applied."

Can you identify the origin of this memorandum; who is referred to when it refers to "ourselves"?

A. That would be our Winnipeg office.

Q. This is a letter from your Winnipeg office to your head office?

A. That is correct.

Q. Was it the usual practice for representatives of your company to get in contact with representatives of the other manufacturers at points such as Winnipeg to discuss uniform pricing of a particular type of product?

A. Not usually.

Q. What was the occasion for this meeting then?

A. I would say there was a little confusion in pricing.

Q. Do you mean they were not all coming out with the same answers?

A. I would say so.

Q. The object of the price lists and the price policies of the various manufacturers was to so arrange their price sheets and their price folders that they would come out with the same answer; is that correct?

A. The prices would be competitive.

Q. What do you mean by "competitive"?

A. They would be the same.

Q. I take it that document EAE1-24 is a reply to this previous document. I see the date is the same. It has to do with the same subject matter?

A. I think it is a clarification of our pricing of weatherproof wire.

Q. Was this a change which had been made at this time with regard to the pricing of weatherproof wire?

A. Yes.

Q. It had been made by all the manufacturers?

A. Yes.

Q. There was a little confusion in putting this change into effect?

A. I believe that is correct.

Q. And this document EAE1-24 is your instructions to your branch office how to price it?

A. Yes.

Q. These instructions as set out in this document EAE1-24, who prepared these instructions? I take it it was sent out by Mr. S. C. Moore to say that this is the system of pricing that had been agreed upon by the manufacturers?

A. I believe that is correct.

Q. And this was dated in 1948. Would that be at the time when you were attending meetings?

A. Yes.

Q. Do you recall this subject having been discussed at a meeting?

A. Yes.

Q. Do you recall an agreement being arrived at?

A. Yes.

Q. Was it agreed that the manufacturers would send out instructions to their branch offices to put these new prices into effect?

A. Yes, new prices would be issued.

Q. That was agreed upon?

A. Yes.

Q. Can you recall was that new system of pricing only applicable to weatherproof wire or was there a general revision of prices in February, 1948?

A. No, the purpose was to provide the electrical wholesaler with a discount of 10% on that wire.

Q. Do you recall if there had been a general revision of prices in 1948 as well?

A. I don't recall any.

Q. I would refer you to document coded EAE3-2-4. That appears to come from Mr. Wild. Was he a representative of your company at Edmonton?

A. Yes.

Q. The next memorandum refers to a new price card of Canada Wire. Do you recall whether a change was made in the price card to follow the Canada Wire system, or did you follow the system as outlined in the document we have just referred to, EAE1-24?

A. I believe we changed to follow the outline given in the letter of February 6th.

Q. In any case, I take it, no matter what system you used you would come out with the same answer?

A. For some months following the change in prices, different prices resulted in weatherproof wire through various interpretations of instructions.

Q. The intent was that everyone would have the same price but use this different method; that is, you were changing the method?

A. That is right.

Q. But the intent was that everyone would come out to the same price?

A. That is right.

(Evidence, pp. 722-726)

That a general revision of prices and changes in arrangements with wholesalers were effected early in 1948 is shown by the following extract from a letter dated September 28th, 1948, from A. L. Brown, of Northern Electric, to district managers and other personnel:

You will recall that effective on or about February 1st last new resale policies were set up with respect to wire and cable products, with particular emphasis on a new policy with respect to building wires and other products which are known as Wholesalers' products.

New prices were issued and a Wholesaler's discount of fifteen per cent (15%) was set up on certain specified types of products and, at that time, an inherent part of our policy expressed the fact that competition could be met within the 15%. Since that time there has been a tightening up of the price situation in the United States, with the result that less wire and cable is being imported, with consequent improvement in the competitive situation.

(Exhibit 57, p. 1)

On August 4th, 1948, Mr. Gass, of Canada Wire and Cable, circulated a memorandum suggesting a revision of magnet wire extras based on similar extras in the United States. The memorandum said:

I have carefully compared the various Extras from American companies and find that generally speaking they are all exactly the same after the recent increases in the States.

I have, therefore, prepared a tabulation which I am attaching hereto, showing Suggested New Extras that we would like to see adopted immediately and to become effective on Monday next, August 9th.

I have also, for convenience, tabulated the Formel extras and hope that the licensor will agree to these suggested extras.

Further details of Rectangular, etc., will follow as fast prepared.

You will notice I have used the U.S. Extra multiplied by 125 which takes care of the 5% discount on maximum quantities in the United States, 20% duty, 8% sales tax, to give the special list of extras that we suggest should be adopted for Canada with the usual proportion of mark-up which we assume Mac will look after for the regular list.

(Exhibit 336, p. 1)

On August 12th, 1948, Mr. Gass sent out a further memorandum, as follows:

Attached, are new proposed prices for Rectangular Magnet Wires.

These are based on current U.S. Extras multiplied by 1 2 5.

(Exhibit 337, p. 1)

With respect to these exhibits, Mr. Gass said:

Q. I show you Exhibit No. 336, which is dated August 4, 1948. Do you identify that as a document prepared in the office of your company?

A. I do.

Q. Is this a copy of a document that was also sent to the other manufacturers?

A. It is.

Q. Could you explain briefly what is meant by the term "extras"?

A. This has reference to magnet wire which is made in a range of sizes from No. 6 which has a diameter of .162 inches down to No. 40 which is about the thickness of your hair if it is not too thick. The cost of producing the various sizes varies, of course, and the extras apply as a selling price over a base price, the base price being regulated by the price of copper which constitutes 99% of the raw material in the product. As copper moved up and down the base price goes up and down. The extras would remain constant unless there is a heavy change in labour rates or cost of enamel.

Q. In this case, I take it that the cost of extras in the United States had increased?

A. Yes.

Q. And you were reflecting a similar increase in Canadian extras?

A. Yes.

MR. WALTON: There is a slight difference here. Do you mean the same?

MR. HUNTER: I am coming to that, Mr. Walton.

Q. Did you take the American extras and multiply them? The last paragraph of your memo sets out exactly how you arrived at your new Canadian extras?

A. Yes.

Q. So you have worked from the American extras and then used this factor to convert to Canadian funds plus customs tariff and sales tax?

A. That is right. May I interject, Mr. Commissioner, that discounts are allowed from that Canadian price. That is not the net price to the user. That is subject to a discount.

(Evidence, pp. 1706-1707)

On Exhibit 336, J. H. Fitzgerald, of Phillips Electrical, said:

Q. Do you know whether these prices were subsequently adopted?

A. I believe they were.

Q. Was it the practice of the manufacturers in Canada to follow normally any increase in U.S. extras?

A. It was a practice to make a study of them and also to set them against cost, and if it was felt necessary to make the change, we did so.

Q. How would the U.S. extras affect prices of wire and cable manufactured in Canada?

A. I don't quite understand the question.

Q. You said you made a study of the U.S. extras with a view to deciding as to whether you would increase your prices or not, and my question is, in what way would these increases in U.S. extras affect the cost or selling price of wire and cable manufactured in Canada?

A. It doesn't, but I would say we used these figures as a guide to the maximum price that could be charged.

Q. If your Canadian price is too high, your American competition will come in?

A. That is right.

(Evidence, pp. 641-642)

F. W. Barnhouse, of Canadian General Electric, said:

Q. Are the extras which would apply in the case of magnet wire manufactured in the United States, would they be the same extras that would be applicable in the case of magnet wire manufactured in Canada, or are these extras related specifically to the manufacturing processes?

A. They are not the same as in the United States, the ones in Canada. There is some relationship, I believe.

Q. Do you know whether the Canadian manufacturers ever adjusted their extras on the basis of increases in U. S. extras?

A. I think they would.

Q. Well, why?

A. Usually you would find that similar conditions were taking place in Canada, like labour going up or costs going up which were parallel to the American industry.

Q. Then I take it that the extras in the United States would have some relationship with the extras in Canada?

A. Some relationship. I don't know what it would be put there is some.

(Evidence, pp. 1570-1571)

A meeting of manufacturers' representatives was held in Montreal on August 19th, 1948. The agenda included reference to magnet wire, non-metallic sheathed cable, AC and ACL wire, type "R" wire and type "T" wire. (Exhibit 99, p. 4). The price sheets of the various manufacturers indicate that uniform increases in the prices of these products were introduced on or about September 3rd, 1948.

The exchange of memoranda on price information among the various manufacturers shows that the approval of all would be requested even for a price revision affecting an item produced by only one of the companies because another company might be producing an alternative or substitute product. For example, on October 27th, 1948, T. A. Gass, of Canada Wire and Cable, advised competitors by memorandum that, having checked into the costs of production of a type of neoprene covered non-metallic sheathed cable and compared them with the costs of the braided type, the conclusion had been reached that the former should sell at a higher price. Accordingly, Mr. Gass suggested new prices and added:

> If no one has any objection taking into consideration that we believe that we are the only ones presently producing this product, we would suggest Mac issue a list for same on the above mentioned basis.
>
> (Exhibit 196, p. 1)

On the attached price sheet Mr. Gass added the following:

> Unless we hear to the contrary, we propose putting these prices into effect immediately and would suggest "M" issue a regular sheet to cover.
>
> (Exhibit 196, p. 2)

In reply, J. H. Fitzgerald, of Phillips Electrical Works, circulated the following memorandum on October 29th, 1948:

> Acknowledging TAG's memo of October 27th, while we do not manufacture the neoprene jacketed type of non-metallic sheathed cable, in the past prices on thermoplastic jacketed cable have been kept in line with the neoprene.
>
> While we have no objection to the neoprene being placed on a higher level, we are not in a position yet to advise whether we are agreeable to having the thermoplastic jacketed type at a higher level, in view of the fact that our studies indicate that the 4/64" rubber insulation and PVC jacket is the cheapest type of construction for this type of cable which may be made.
>
> (Exhibit 197)

In evidence, Mr. Fitzgerald said:

Q. Mr. Fitzgerald, the last paragraph of that exhibit indicates that Canada Wire and Cable was the only one then producing this particular product?

A. I believe, Mr. Commissioner, that is correct.

Q. Was the practice for a manufacturer to ask for the consent of the other manufacturers with respect to the price of a product of which he was the only manufacturer?

A. This is a type of thing that other manufacturers could manufacture if they wanted to, and also an alternative construction could have been offered.

(Evidence, p. 645)

The exchange of information between manufacturers with a view to establishing a uniform price and uniform conditions of sale for a special product made for a special customer is illustrated by the following memorandum of May 31st, 1949, from T. A. Lindsay, of Automatic Electric, to J. H. Fitzgerald, of Phillips Electrical Works, dealing with the subject of BX armoured water heater cable:

> With reference to G's memo dated May 26th, our Toronto Office have been using a figure of $123.00 per 1,000 ft. for this item. This price was given to them by Mr. Perry in his memo dated September 9, 1948. This price would, of course, have to be revised in line with other BX items and the suggested list price of $110.00 per 1,000 ft. appears satisfactory from our point of view.

In addition to the Toronto Hydro, we also sell North York Hydro a considerable quantity of this material and we feel that they should likewise be given a discount of 15% from the list price which is established.

(Exhibit 165)

On this matter Mr. Fitzgerald said:

Q. Is that an instance where information is being prepared for the purpose of exchanging between manufacturers with regard to a certain tender?

A. No, I think this was in connection with establishing a price for a special water heater cable to the specifications of the Toronto Hydro-Electric System.

Q. And the reference in the first sentence of the memo:

"With reference to G.'s memo."

Is that Mr. Gass of the Canada Wire and Cable Company?

A. That is right.

Q. Could you recall what the purpose of the discussion between the Canada Wire and Cable and Automatic Electric was?

A. Will you allow me to read this first?

Q. Certainly.

A. I believe, but I am not just sure about this, but this is a method of establishing a price for the Toronto Hydro which would permit them to buy it direct at the same price as a jobber could buy it.

(Evidence, p. 648)

The evidence establishes that the agreements or arrangements for price uniformity among the manufacturers made it possible at times to avoid price decreases in Canada even when prices for the same product in the United States had fallen below Canadian prices. At a meeting of manufacturers held in Toronto on June 8th, 1949, it was pointed out that Canadian prices for building wires were 10 per cent to 15 per cent above the import price from the United States. While the meeting discussed the reductions that would be necessary in Canadian prices to meet competition from imports, it was apparently agreed not to lower domestic prices because it was felt that the price of the imported product would rise. L. G. Lumbers, of Canada Wire and Cable, expressed the opinion that more would be lost by trying to meet the

import price than by allowing imports to enter Canada. (Exhibit 193; Evidence, p. 1349).

In his notes on a meeting of manufacturers held on January 24th, 1950, which he sent to G. W. Arnold, of Boston Insulated Wire and Cable, T. J. Bell, of Federal Wire and Cable, reported, in part, as follows:

5. BX Cable:

There will be an increase, between 2% and 4%, in the price of steel and new prices will be out within the next few days. The effective date will be February 1st, 1950, and there will be approximately one week's notice of change. The price sheets are to be dated on varying dates but made effective February 1st.

(Exhibit 304, p. 2)

Mr. Bell was apparently advising Mr. Arnold who was not present at the meeting of a decision reached with respect to new prices and their effective date. It will be noted that it was thought best to date the price sheets "on varying dates" although the effective date was to be the same. Price sheets obtained from various manufacturers show that the price of BX cable was uniformly increased by all manufacturers on February 1st, 1950, as had been indicated in Mr. Bell's notes.

On November 6th, 1950, L. G. Lumbers, of Canada Wire and Cable, circulated to the other manufacturers a memorandum on a product described as "Neoprene Canadex with Ground Wire", with a list of suggested prices "which we trust will be found quite in order". (Exhibit 171). On November 7th, 1950, a memorandum revising these prices somewhat was issued "in accordance with a list already printed by Gr's Office". (Exhibit 170). "Gr" was identified as W. R. Greenshields, of Triangle Conduit and Cable.

On this matter Mr. Greenshields said:

Q. Mr. Greenshields, does your company manufacture neoprene Canadex with ground wire or a product which is in competition with that product?

A. We manufacture non-metallic sheathed cable with a ground wire.

Q. I show you Exhibits Nos. 170 and 171, and from the series of initials which appear in the lower left hand corner on each document would the "GR" indicate a copy was intended for you?

A. I would say yes.

Q. That is the abbreviation that was sometimes used for your name?

A. That is right.

Q. Having had an opportunity of looking at these, would you be interested in receiving price information on this type of product?

A. Yes.

Q. Because you manufacture something which is similar?

A. That is right.

Q. Is this an example of the type of information which was exchanged on prices?

A. Yes.

THE COMMISSIONER: Q. Was your product exactly the same?

A. No, it was not exactly the same. Canada Wire made what is known as neoprene and up to that point we were making non-metallic sheathed cable. It was a different coating entirely than neoprene. Neoprene was put on to meet our competition, as a matter of fact.

Q. Were the two used for the same purpose?

A. Yes.

Q. And they sold at the same price?

A. Yes.

Q. Did you produce your type with the different coating before neoprene was produced?

A. Yes.

Q. Did your costs warrant the same price for the two products?

A. As a matter of fact, we had to discontinue making it.

Q. Why?

A. We could not meet the competition that they brought it down to. We could not manufacture it for what they could, so we gave it up. Ours was Farmex.

Q. The effect of the neoprene product was to cut out the production of your own product?

A. Other types similar, apparently, they were able to manufacture for less than we could manufacture our particular type and make a decent job of it.

Q. Was it an improved product as compared with yours?

A. I do not think it was. It was particularly used in farm work where there are rats and rodents and fungus. We started to sell quite a little bit of it and every one else jumped in and made substitutes.

Q. There is competition there?

A. Yes, very much.

Q. Are there continued attempts to improve the product or is it the effect of the policy of agreeing or aiming at uniform prices not to improve the product because you do not have to?

A. No, I would say different companies are looking continually to improvement; they have got to do that.

(Evidence, pp. 1394-1396)

While this evidence confirms the practice among the manufacturers of exchanging information with a view to agreement on uniform prices, it also shows that the agreements or arrangements in the industry did not extend to the elimination of competition which might be offered by an improved product.

Reference has been made to the influence of the laid-down price of imports from the United States on the prices agreed upon by the Canadian manufacturers. When government controls in the United States limited the possibility of exports to Canada, the Canadian manufacturers were able to adjust prices with greater freedom. On December 19th, 1951, Northern Electric sent out the following memorandum:

> We are attaching hereto proposed increased Base Prices and Extras for Bare Copperweld Wires and Cables and increased prices for Weatherproof Copperweld Wires and Cables, for your consideration. The Base Prices have also been increased in keeping with the new Toll agreement with Copperweld Steel Co.
>
> You are, no doubt, aware that these prices have not been revised to take care of increased costs other than Copperweld

Rod for several years, and we feel that it is time to make an adjustment for increased manufacturing costs other than rod.

We have made cost/price studies on these products and, on the basis of their results, have arrived at the attached prices. Further, in view of the fact that prices in the U.S. are "frozen" at the present time, and since there is only a slim possibility of Copperweld products being imported into Canada, we have ignored our past procedure of basing our prices on U.S. laid down prices.

We are also recommending that St. Johns, Que. be established as an F.C.B. Point since we have had several requests to do so.

We plan to issue these increased prices effective Dec. 24th, 1951. If you are not in agreement kindly get in touch with us immediately.

(Exhibit 125, p. 1)

In his evidence, D. C. Borden, of Northern Electric, said:

Q. If it was sent out to other manufacturers and on the basis of the system of circulating memoranda which is in use, I take it that the "M" would be indicative of originating in Northern Electric Company?

A. I think you are right. I would not be positive but I think it is a fair assumption.

Q. Is there any explanation you would like to make in regard to these proposed increases of base prices; you said this was done on your instructions?

A. Yes, I would. Copper-weld - incidentally, that is a special composite wire with a steel interior to give it strength and a copper exterior to make a better electrical conductor. Northern Electric is definitely and quite legally the principal copper-weld representative in Canada. The Copper-Weld Company have made agreements with other manufacturers and all of the rod from which the wire is drawn comes from the Copper-Weld Company in the United States. Because Northern Electric is the senior or the oldest brother in the Copper-Weld family in Canada, they look to us for guidance on prices.

Q. Who looks to you for guidance?

A. The other manufacturers. They do look to us for guidance, and the reason I instigated this was that Clish pointed out to me that our costs for copper-weld rod had been steadily increasing and various other costs had increased and the

profit on it had become practically negligible. When I say practically negligible I mean our over-all profit. Some of the items in the copper-weld family were making profit but the over-all was not satisfactory.

(Evidence, pp. 482-484)

Referring to the third paragraph of the memorandum of December 19th, 1951 (Exhibit 125), Mr. Borden explained that the costs of production of copperweld in Canada were higher than in the United States, and that in order to obtain any business Canadian manufacturers had been obliged to sell at the laid-down price of the imported product. Although this did not afford them a satisfactory return, they continued to carry the line for prestige purposes. An effort was then made to correct this situation and new prices were worked out on the basis of Canadian costs. These prices were higher than the laid-down price of the import but in view of the shortage of copperweld in the United States, it was possible to introduce the new prices in Canada. (Evidence, pp. 484-485).

On further examination, Mr. Borden said:

THE COMMISSIONER: Q. Do you have any competition in Canada on this copper-weld cable?

A. These people are all competitors.

Q. It is produced by the others?

A. It is not exactly the same group that we have been talking about on the straight copper products. That is, there are a total of nine wire and cable manufacturers in Canada. There are four power cable manufacturers but the number of people who sell copper-weld is a slightly different group. It just happens that people have direct dealings with the Copper-Weld Company so certain others have entered the copper-weld field as our competitors. The Canada Wire and Cable buy their copper-weld rod from the Copper-Weld Company in the United States. They buy their rod and offer a fairly complete line of products. One or two of the smaller companies buy wire from us. We import the Copper-weld rod and we draw it down to the size these people want and sell it to the manufacturers who insulate it and offer an insulated product. So you see that we have competition. We have five competitors, some of whom buy the wire from us and others the rod product. We have competition.

Q. As of this date were you concerned with competition within Canada?

A. We wrote this letter to competitors.

Q. Proposing an increase in price?

A. Yes.

Q. Because your competition from the United States was decreasing and therefore, you were able to do it?

A. No, because we have competition from these Canadian manufacturers.

Q. Have you what you call your orderly marketing arrangement with them?

A. Yes, this is part of it.

Q. Would you have been able to do this if supplies in the United States had been adequate and they would have continued exporting to Canada?

A. It would have been more difficult. I do not think we could have.

Q. Were you able to make this proposition because of your orderly marketing agreement which protected you in the Canadian market and because American competition was declining?

A. Yes, I do not see how we could have done it. The cost price analysis we made called for an increase in prices. I will have to explain it. I told you this morning what happened in the flexible cord business. We had to go out of it because we could not get the prices that would show a profit. If there had been ample supplies of Copperweld coming in from the States at these prices we would have been faced with a continuing low profit. I do not know what would have happened, but we did take advantage of the fact that the Americans were not shipping copper-weld into Canada to bring these prices up to a level that we thought was reasonable.

Q. To your knowledge were your competitors affected in the same way; did they find the price unduly low?

A. I do not think I have any information on that. There was some discussion of this by phone but I do not really know. They accepted it, but there was a discussion. What they thought of it I do not know. They might have said it was not high enough. You may be able to find out from some one else.

MR. HUNTER: Q. Mr. Borden, were these increased prices made effective December 24, 1951?

A. I think so, but I am not sure. The thing seemed to go pretty well on schedule.

Q. Did the competitors of this copper-weld product go to your proposed increased price at the same time?

A. I think they would follow. We are just telling them we are putting up our price.

Q. You say:

> "We plan to issue these increased prices effective December 24, 1951. If you are not in agreement kindly get in touch with me immediately."

A. It is just giving them an opportunity to discuss it on the phone, which they did. I think that phrasing was worked out a long time ago but what actually happened was that we discussed it on the phone. Either Clish or Macdonald discussed it and there was no serious disagreement, and we issued our prices.

(Evidence, pp. 485-488)

Early in 1952 the manufacturers agreed on new uniform prices for building wires. Under the allocation of responsibilities for price studies agreed upon by the industry in January 1950, as shown in Exhibit 304, Northern Electric was to prepare price information on building wires. Accordingly, on January 25th, 1952, the following memorandum was sent by Mr. Borden to Messrs. Lumbers of Canada Wire and Cable, Fitzgerald of Phillips Electrical Works, and Barnhouse of Canadian General Electric:

> Attached hereto are sheets showing our proposed decreased prices on the following products:
>
> Types "R" and "RF"
>
> Types TW, TF and TFF
>
> Types RH and RW
>
> R.I.L.C. 0-600 Volts
> (Sizes 14 to 4 incl.)
>
> If no contrary-minded comments are received by Feb. 4th, 1952, we intend to issue these prices effective Feb. 11th, 1952. It is expected that others, on receipt of our Price Sheets, will issue theirs on dates after Feb. 11th, 1952.

(Exhibit 115)

When examined on this document Mr. Borden said:

THE COMMISSIONER: Q. Was there a discussion before you issued this memorandum or after it was issued?

A. There were discussions of a kind. I think a history of this is interesting because this very definitely was one of the cases where our profit was too high.

Q. Where the Northern Electric profit was too high?

A. Yes, the profit rate on building wires. This emanated from fairly well up in the top in Northern who would get monthly and quarterly reports showing the profit on each line. Now, the first I heard of this was when Mr. Eastlake told me that the management had pointed out to him that our profits were unreasonably high on the classification that includes this and that I had better do something about it. At a meeting before this - let me see now - it was at a meeting before this date. It is beginning to make me think there must have been another meeting in there. At a meeting before this date I told the members of the group exactly what I have told you now, that Northern was concerned with the unduly high profit on this line and we felt we must reduce our price. Some of the people in the meeting, some of the larger ones who looked at things in a broad way, said, "Well, we must agree with you; our profits are too high". I am quite sure I can remember what I reported back to Management on that, but the comments varied all the way from agreement of the larger manufacturers to silence on the part of small manufacturers. I was satisfied that the whole industry was in pretty much the same condition we were in. We were making what seemed an unreasonable profit too far away from this level that I think is right. Top management said, "Did they disagree?", and I said, "Substantially, they were in agreement", and then we worked it out and on certain items reduced it 5% and others 10% and others different figures. All of this was based on looking at our costs. The list price of the items were changed and these were sent out. Now, that was the first discussion. I said a moment ago there were two discussions. The second discussion I can remember and I believe that somebody said, "I am not going to make any money on No. so and so, type R." I can only generalize. If you will look over the whole line you are probably making plenty of money and this is a price, we were convinced, at which industry could well afford to sell the product. Any comments that came back were pretty well talked out. There was not any serious hardship going to be worked on anyone, and consequently, the comments that came back did not produce any effect and as it says here, "If no

contra-minded comments are received by February 4th we intend to issue these prices." In effect, there were no contrary minded comments because we talked them all out.

. . .

Q. Why did Northern Electric not go on its own in this case?

A. Because experience has shown that group action is more effective and the general pattern of our prices is group action. In other words, we found that it made for a much more orderly system of marketing to tell other people what we were going to do.

Q. Was there an understanding between Northern Electric and the other manufacturers which required Northern Electric to advise them in advance of a prospective decrease in price?

A. Well, we could not use the word "required" at all. We are reasonably friendly in the industry and we like the other fellow to tell us what he is going to do, and therefore, we tell him. It is good business for us to do that.

(Evidence, pp. 447-450)

Mr. Borden testified that the proposed new prices were made effective by Northern Electric on February 11th, 1953. (Evidence, p. 453). He indicated that the same prices were adopted by the other manufacturers on different dates, as had been suggested in his memorandum of January 25th, 1952 (Evidence, p. 453), and said:

Q. Why do you suggest in your memorandum that your competitors should issue their sheets on dates after February 11?

A. Well, I think we know the reason. It is something that is inherent. If there was no collusion somebody would issue a price sheet. In this case the thing we are talking about, the Northern Electric would have issued a price sheet. Five minutes after it got out in the field every competitor's salesman would have found it and phoned in about it and they would have decided they would have to have the same price, and a couple of days later they would issue a similar price sheet. That is the thing that would happen and must happen because products are built to the same standard and the man with the low price gets all the business. I have inherited this system of staggering prices.

Q. The issue of price sheets is staggered?

A. Yes.

. . .

Q. Was the adoption of these prices of this particular item of material you refer to ever discussed at a meeting of the manufacturers?

A. I just told Mr. Goldenberg direct that I went to a meeting to sound out what their reactions would be.

Q. At the meeting was there any arrangement made then as to how much of a jump Northern Electric would have on its competitors with regard to the date of publishing the new prices?

A. Not particularly. For some time it has been the practice that prices would not go out all on the same date but they can do it as fast as they like. It is entirely up to the individual. I do not ever remember any discussion in which it was agreed that you bring them out on this date and I will bring them out on that date.

Q. In other words, the arrangement here was that Northern Electric would put theirs out first and the others later?

A. Yes.

(Evidence, pp. 453-455)

On further examination, Mr. Borden said:

Q. I gather from what you said this morning the suggestion that is contained in the second paragraph of this memorandum, Exhibit 115, that other companies' price lists should follow yours is really to make it look as if there has not been an arrangement or an agreement on the new prices; is that correct?

A. I guess that is how it started. I do not know. It is something I took over. I always assumed that was the purpose of it.

(Evidence, pp. 458-459)

J. H. Fitzgerald, of Phillips Electrical, said:

Q. Is there any practice or custom between the manufacturers about effective dates on which changes will be made in price sheets?

A. It has been done various ways. At times they have been made effective, perhaps, as soon as you get the sheets and,

therefore, yours may be dated some time later. Your effective date may be some time later and sometimes we have printed them post-dated.

Q. Does it sometimes happen that one manufacturer would put out a price list and take it into effect, say, on the 6th of the month, and the other manufacturers might not get their price lists out and into use for, maybe, a week or two weeks later?

A. That does happen.

Q. During that period of one week or two weeks does the manufacturer who gets out his price list and into use obtain a jump on his competitors?

A. I don't think he does actually, because if we knew of a price change being made we would probably notify our branch offices and they would raise them later when they got the sheets.

Q. Would they cover that by way of a rebate?

A. Usually they would hold up the invoices on that. It might happen that they did have invoices out and if the customer complained they would give him a rebate.

(Evidence, pp. 664-665)

Agreement on the proposed changes in the price of building wires in February 1952 was confirmed by W. R. Greenshields, of Triangle Conduit and Cable. (Evidence, pp. 1393-1394).

On March 17th, 1952, the following memorandum was sent to the other manufacturers by J. W. Kerr, of Triangle:

We should appreciate your being ready to discuss steel vs. aluminum armoured cable.

(Exhibit 122, p. 1)

The following notation in pencil, signed "MRM", appears at the bottom of this memorandum:

This is from J. Kerr of Canadian Triangle Conduit Co. At our last meeting, you will recall that Kerr and Greenshields were insistant that the prices for steel armoured AC and ACL cables should be lower than those for aluminum armoured. They stated that steel armoured cable cost them much less to manufacture than aluminum armoured cable. The other companies including us did not agree and it was voted down.

Apparently Kerr still wants to make an issue. I have asked Mr. Clish to let us have comparative costs.

The signature "MRM" was identified as that of M. R. Macdonald, of Northern Electric. (Evidence, p. 475). In his evidence, Mr. Macdonald said:

Q. Is there any explanation that you would like to make as to what the occasion was as to why Mr. Kerr would be asking Northern Electric to be prepared to discuss steel versus aluminum arnoured cable?

A. I said in my own notes Canadian Triangle had suggested that the prices for steel armoured AC-ACL cable should be lower than for aluminum cable.

Q. I notice your memorandum goes on to say: "They state that Steel armoured cable costs them less to manufacture than aluminum armoured cable. The other companies including us did not agree and it was voted down." Was this at a meeting of the manufacturers' representatives?

A. Yes.

Q. And was this matter subsequently discussed again at a further meeting?

A. No, it was not.

Q. Was Mr. Kerr voted down or were the prices eventually adjusted?

A. No, they were left as they were. I might explain, if I may. Actually in this case it is not a case of the Canadian Triangle, in my opinion, being able to make steel armoured cable at a lower price than aluminum armoured cable, but it is a case of them not being able to make aluminum armoured cable as cheap as steel armoured cable, which we can do. If you have examined these attached cost sheets, these are the sheets that we prepared for the meeting to discuss that very point. The reason he was voted down, to use the words I have in there, was that the other manufacturers including Northern Electric thought there was very little difference in the costs of the two armoured cables.

Q. When you did not agree the prices remained as they had been?

A. Yes, we suggested that the Canadian Triangle investigate their costs a little further. It is made on the same machines and it is impossible to explain how you can make steel as cheap as the aluminum. It cannot be done.

Q. Did the Canadian Triangle continue to sell at the price they had been selling at; they did not lower their price?

A. They continued to sell it at the same price.

(Evidence, pp. 580-581)

On the same point J. H. Fitzgerald, of Phillips Electrical Works, said:

Q. Mr. Fitzgerald, do you recall attending a meeting some time subsequent to March 17th of 1952, at which one of the subjects discussed was steel versus aluminum armoured cable AC and ACL?

A. Yes, I do.

Q. Do you recall when that meeting was held?

A. I believe it was April 2nd.

Q. Of 1952?

A. Of 1952.

Q. Do you recall whether any decision was made at that time as to what should be done with respect to the pricing?

A. No, a decision was not made.

Q. Could you briefly explain the problem involved or what the subject involved was?

A. During the steel shortage we developed an alternative using aluminum in place of steel, and it has been selling at the same price and most of our findings are that it costs a great deal more and there was a question as to whether or not there should be a difference in price.

Q. Am I correct in my understanding that one of the manufacturers felt that the price should be lower for steel?

A. Yes, that is correct.

Q. Are the prices lower for the steel armoured than for the aluminum armoured?

A. No, they are the same.

Q. Although, I gather from what you said they should be lower?

A. No, I think pretty well everybody would have to come to the same conclusion that the aluminum costs more but it is a question of whether or not you are going to absorb that extra cost to have uniformity, and also it is a question of whether the customers would be prepared to pay a premium for the aluminum.

Q. In any case, at the present time there is no differential in price and there is uniformity amongst the manufacturers on the price?

A. That is right.

(Evidence, pp. 695-697)

T. J. Bell, of Federal Wire and Cable, said:

Q. I notice at the bottom of the document 3 NE 4-5 there is a pencil note which states in part as follows:

> "At our last meeting you will recall that Kerr and Greenshields were insistent that the prices for steel armoured AC and ACL cables should be lower than those for aluminum armoured. They stated that steel armoured cable cost them much less to manufacture than aluminum armoured cables. Other companies, including us did not agree and it was voted down."

Now, do you recall being present at any meeting at which a discussion took place as indicated in this part of this handwritten memo which I have read to you?

A. Yes, I do, and I will agree with part of this but I will disagree with the last sentence, I will not agree with.

Q. That is the sentence which reads: "Other companies, including us, did not agree, and it was voted down"?

A. "Voted down". Since that is not my writing, it is not my document, I only give you my own interpretation of the thing. The Canadian Triangle Company were anxious to continue using steel since they have a steel plant in the United States that produces this material. They felt that they did not want to go to aluminum and that if it was necessary for them to lower the prices to make steel they would do so. They asked us this question: "Would you agree to sell steel wire at a lower price?". We did not agree to sell steel at a lower price. We said: "We will continue to make aluminum available at the current price". There was no vote on the matter and it was certainly left to them that if

they preferred and desired to sell steel at a lower price it was absolutely up to them and it was their prerogative to do so if they wished.

THE COMMISSIONER: Colonel Bell, if it was absolutely up to any firm to sell at any price they wanted to, why all these meetings and discussions that you have been talking about all day?

A. Well, Mr. Commissioner, in my opinion these meetings have had a good deal to do with the steady and healthy growth of this industry, and while it would be possible to have orderly marketing without these, it would not be nearly as healthy. We could quite easily have a considerable amount of chaos in the industry. We are faced with several inescapable facts, and one is the fact that we are producing a standard commodity, and the other is that as far as our customer is concerned he really couldn't care less whom he buys it from: if he gets a competitive price (and I use it as my own term) he is happy, and if he feels that the competitive price he receives is not unduly enhanced.

(Evidence, pp. 1962-1964)

2. Tonnage Materials

Wire and cable products classified as tonnage materials include weatherproof wire, annunciator wire, bare copper wire and magnet wire, although some of these may also be sold on a footage basis. In the case of these products and of power cables, copper and lead constitute a very large part of the cost of production, and fluctuations in copper and lead prices must be reflected in the price of the products. Since the price adjustments might be made in different ways, depending upon the source of price information and other factors, the wire and cable manufacturers could not have maintained uniform prices for the products concerned without adopting a uniform policy for dealing with fluctuations in the prices of the base metals. The evidence establishes that they have in fact followed a uniform practice for reflecting these changes in the prices of tonnage materials and that they consult with each other before adjustments are made.

The system of adjusting prices to reflect changes in the copper base price has been the same for some years. The pricing basis is in effect determined by the decisions of three parties, namely, the copper producers, the rod rollers, and the wire drawers. In July 1947 it was agreed to base the price of copper on quotations published in "American Metal Market", a trade journal. In April 1949 the copper producers advised that the price would henceforth be based on quotations in the "Engineering and Mining Journal". (Exhibit 370).

The evidence shows that it has been the usual practice of all the companies to adjust the prices of tonnage materials with each increase or decrease in the base price of copper bars which would effect an increase or decrease of at least 25 cents per hundred pounds in the manufacturers' price for the finished product. The adjustment for each of the products was effected in its base price which is related to the base price of copper bars. The latter base includes a conversion charge for rolling and fabrication costs which is also adjusted from time to time to reflect increases in costs other than costs of copper. Base prices were listed for weatherproof, annunciator, bare copper and magnet wires prior to February 2nd, 1948, and thereafter for bare copper and magnet wire. At about that time weatherproof and annunciator wire became available on a footage basis and the price set-up was adjusted to meet this new arrangement. Extras were added to the list prices to arrive at the net price of a particular size and type of bare copper and magnet wires.

While the process of adjusting the copper base was essentially automatic, there were occasions when effect was not given to the full decrease in the price of copper. This would occur, for example, when, although the price of copper had declined, the costs of other raw materials and of labour had increased. In order to maintain uniformity it was, therefore, necessary for the manufacturers to discuss the amount of the increase or decrease by telephone. (Evidence, pp. 1743-1744, 1932-1933).

With reference to the procedure to be used when adjusting prices for copper increases, T. W. Brackinreid, of Phillips, sent the following memorandum to P. A. Timmons, of Automatic, on February 23rd, 1940.

> In My telephonic conversation with you several days ago, I pointed out that Mr. Gass had shown his desire to agree with our contention that when the price of copper increases we should not accept orders at the old price, but all contracts should be taken at the increased price.
>
> I would suggest that you talk to Mr. Gass along these lines and see if both of you cannot make a concerted effort on the Northern, or if you think it desirable probably we should bring this about through other channels.
>
> (Exhibit 247)

Mr. Brackinreid was apparently seeking to eliminate the possibility of lower prices being quoted by some manufacturers when an increase had occurred in the price of copper. In his evidence he indicated that this discussion was directed towards the adoption of a uniform practice in dealing with price increases. (Evidence, p. 831).

Various witnesses confirmed the uniform policy and practice pursued by the interested companies in giving effect to changes in the base copper price and the fact that such changes were discussed and agreed upon before they became effective. Extracts from the evidence on this point follow.

K. P. Macpherson, of Northern Electric:

Q. Do the manufacturers use this base price of copper as set out in those journals weekly? Is it a weekly price or a daily price?

A. I believe the correspondence indicates we are currently buying on the weekly average price.

Q. Is the weekly average price of copper used for any other purpose than to set the price of your copper rods which you purchase from the two companies, Canada Wire and Cable and Phillips?

A. The weekly average price is also used in establishing the base price of copper wire. If it goes up, the price of copper wire goes up. If it goes down, the price of copper wire goes down.

Q. Can you explain the mechanics of how the increase or decrease works in the industry on copper wire and cable?

A. No, I cannot.

Q. Are you familiar with it?

A. I used to be in times gone by. I do not know what they are doing now.

Q. When you were sales manager, what was the practice?

A. Well, the practice was that we added our conversion charge to the copper rod price and added the sales tax and rounded it off to the nearest quarter of a dollar.

Q. When is it decided to make those increases or decreases based on this change in copper?

A. When we get our new price of copper rods each week.

Q. Do you change each week or is there a certain minimum amount?

A. We do not change under 25 cents.

Q. Is that 25 cents per what?

A. One hundred pounds. I think that is what it was when I had contact.

Q. Let us amplify that a bit. If you get an increase in copper according to whatever journal you are using of more than 25 cents per 100 pounds, then what do you do?

A. That would mean an increase in the price of copper wire by that amount, roughly, taking in the exchange variations and the weekly average price. We get the weekly average price from the copper producer. They are the people who send it out.

Q. If there is that change, you make the adjustment and issue new sheets?

A. That is correct.

Q. What happens when there is a decrease?

A. The same thing.

Q. Is the practice of the different manufacturers all the same, that is this 25 cents per 100 pound weight increase; do they all revise their figures on the same basis?

A. I think they do.

Q. Did they when you were sales manager at any rate?

A. They did, yes.

Q. That was one of the methods, I presume, by which the manufacturers would know that prices as between manufacturers would remain the same; is that not correct?

A. I suppose it could be boiled down to that.

. . .

Q. In any case there was an agreement amongst the manufacturers they would use the same formula for increase or decrease, based on the American Metal Market Journal or the E. and M. J. journal?

A. If there was, it was started long before my time.

Q. Was there an understanding when you were there that was the system that would be followed by the manufacturers?

A. Well, we knew what they were doing. We knew how the price was being arrived at and anyone can analyze the copper price on the published basis.

Q. It was a uniform practice across the industry you did not adjust the prices except on an increase or decrease of 25 cents or more?

A. That is what we tried to adhere to.'

BY MR. KER:

Q. That was with regard to copper?

A. With regard to copper.

BY THE SPECIAL COMMISSIONER:

Q. In answer to Mr. Hunter, Mr. Macpherson, with respect to this question of an agreement, I think I heard you say if there was an agreement it was entered into long before you came into the picture?

A. That is correct.

Q. Mr. Hunter did not ask you as to the time when an agreement was entered into. He merely wanted to know whether an agreement was entered into, to your knowledge. Was there an agreement? Whether you had anything to do with negotiating it or setting it up is not a question at the moment. I would like you to answer that question directly. If you do not know, say so.

A. Well, I do know that the prices came out the same, which implies that we were all using the same method. Does that answer your question, sir?

Q. Well, you are saying that the end result indicates that there must have been some understanding at least among the parties?

A. That is what I said.

(Evidence, pp. 263-268)

J. H. Fitzgerald, of Phillips Electrical Works:

Q. Was there a formula, if I may use that term, or was there an arrangement between the manufacturers as to when you would increase and when you would decrease depending upon that quotation?

A. In general, yes. I would say that if the increase was under 25 cents - I am speaking of wire and cable - if the increase was less than 25 cents it would not change.

. . .

Q. I take it from what you said whatever was done would be a uniform action by all the manufacturers?

A. Yes.

Q. How would you decide how much of the increase or the decrease you were going to take?

A. It would be discussed by phone.

Q. Who acted as the central point for the exchange of information or the pivot point?

A. I might initiate it with Northern Electric or they might initiate it with me.

(Evidence, pp. 612-614)

V. N. Longtin, of Cables, Conduits and Fittings:

Q. My question is, suppose an increase in copper of 15 cents a hundred pounds from one week to the next, would you reflect that increase in your copper or in your wire and cable products. That is you, your company?

A. I am not sure whether they wait until an even 25 cents.

Q. Who decides if you wait for an even 25 cents?

A. I guess that would come from Northern Electric who send figures, whether to add or deduct.

Q. You don't make any decisions yourselves?

A. We haven't done it; but we can get E & M Journal. The same thing.

Q. Suppose you do get it from them. From one week to another there may be 15 cents a hundred pounds increase. How would you reflect that in your prices?

A. Not until we receive official notice.

Q. From what you suggest then what appears in the E & M Journal has no influence? It is what is forwarded to you from the Northern Electric?

A. That is right.

(Evidence, pp. 950-951)

W. R. Greenshields, Triangle Conduit and Cable:

Q. Supposing copper took an increase of 15 cents for 100 pounds, would you under the practice that you were following increase your price?

A. No.

Q. If it was 30 cents 100 pounds?

A. It would depend entirely - for small wires and cables, no.

Q. What I was wondering is if you were making this increase on certain products at certain times and your competitors were also doing it, how was it possible for you all to take the same increase in the same product without exchanging information, or did you exchange information on how much you were going to increase your price?

A. Yes, there would be information exchanged as to the advisability of increasing your price.

Q. Did you manufacture any product other than AC or ACL on which you received price information from other manufacturers? In those cases do you take copper increases on advice received from them?

A. Yes.

Q. It would not be your decision; it would be from them?

A. That is right, but it could be again that I have our own costs taken and I might disagree with their stand.

THE COMMISSIONER: Q. If you disagreed with their stand, could you discuss it with them or would you go on yours?

A. I would give them my reasons for my objection either up or down. On occasions I did not think it was warranted and I have said that.

(Evidence, pp. 1390-1391)

T. A. Gass, of Canada Wire and Cable:

Q. Is this E. & M. J. average prices used by the manufacturers of wire and cable for the purpose of adjusting their prices on tonnage material or was it used?

A. It was used or should be used. I advised them of the E. & M. J. average converted into Canadian funds on Thursday of every week until May 27 of this year.

Q. On tonnage material as the price of copper increased or decreased was there a direct reflection in the increase or decrease of tonnage material prices?

A. There was to the nearest one-quarter cent per pound taking into consideration the sales tax on the material as well which would be included in the price.

Q. This nearest to a quarter of a cent per pound, had that been worked out by agreement among the manufacturers?

A. It doesn't require any working out. You can decide what the nearest quarter of a cent was.

Q. Who decided it was a quarter of a cent?

A. Usually I say it would be mutually understood. On Thursday we have the price and if it was up a quarter of a cent you would automatically raise your next week's price.

Q. If it were up one-eighth of a cent?

A. No cognizance would be taken of it.

THE COMMISSIONER: Q. By your firm?

A. By my firm, and not by any other firm.

MR. HUNTER: Q. Was there ever an occasion of which you have knowledge where there was a decrease in price of copper but where the figure was not reflected to the full one-quarter cent?

A. I can recall where other factors other than the price of copper, continually increasing labour costs necessitated a difference in the price between the price of copper and the price of wire so I would say that at the same time, taking that into consideration, your assumption would be correct, that the full amount was not reflected in the reduction. Possibly, similarly, more than the increase in the price of copper might be reflected on your added rubber costs from time to time.

Q. To the extent that there was that departure from the rule of thumb of one-quarter cent per pound, did all the manufacturers reflect that change?

A. I would think so. There was also the question of changes in the sales tax.

Q. Was that done by arrangement or agreement or mutual consent, as you have used the word?

A. Acquiescence.

Q. Was that discussed with manufacturers before?

A. I think it was discussed over the phone or merely mentioned.

Q. It would have to be that way or you would not know when to go to the price?

A. On Thursday we received our E. & M. J. prices by telegram. On Thursday at noon we received the Bank of Canada official exchange rate for Canadian dollars vs. American dollars and I think, generally speaking, if the change in the E. & M. J. price was sufficient to warrant a change in price that postcards would go out of the office to 3500 people the following day and the same evening a telegram would go to all our branch houses. Any commodity like copper you have to follow the market quickly.

Q. That would be where there was a direct reflection of an increase or decrease?

A. Yes.

Q. Where these other factors come into consideration -- ?

A. There would be a discussion between manufacturers by telephone.

Q. To see what was going to be done?

A. Yes, one or two, anyhow; not all manufacturers.

(Evidence, pp. 1741-1744)

T. J. Bell, of Federal Wire and Cable:

Q. Then as there would be changes in the E. & M. J. average figure, your Company would adjust accordingly?

A. We would adjust our prices the following week probably. What we did, the average E. & M. J. price was the average of all the sales on the New York exchange from Wednesday or Thursday to the following Wednesday inclusive. We are speaking in retrospect.

Q. Yes.

A. Now, on the Friday following that week's previous sales, those prices would be averaged and would be available to us on Friday morning when we received the Engineering & Mining Journal, which would show the average prices. Then the price we paid for the copper we received in the plant the following week, the succeeding week, would be based on that average price, so we would naturally adjust our prices for sale in the following week.

Q. And was there on tonnage material any sort of minimum increase or minimum decrease?

A. No. Normally it would never change no increase or decrease of less than a quarter of a cent.

Q. That would be twenty-five cents a hundredweight?

A. That is right.

Q. And if it was an increase of, say, thirty cents a hundredweight, would you adjust on the thirty cent basis or would you adjust the increase, or would it be the twenty-five cents basis?

A. Normally the twenty-five cents unless it was over the half way. We usually adopted the minimum, the closest.

Q. Did the same apply on the decreases?

A. Yes, it went both ways and it worked automatically.

Q. Was that a matter which had been discussed and agreed upon by the manufacturers that they would all use this twenty-five cent increase or decrease or one per cent of twenty-five?

A. In my association with the industry I have never heard the matter discussed. It has been a problem. It has been a rule of thumb as long as I have been connected with the industry. Since copper is our basic raw material, it only follows, especially on tonnage items, that we must follow the market very closely both up and down.

Q. And the twenty-five cent rule of thumb has been in existence throughout your knowledge of the industry?

A. Yes, and I wouldn't say it was always followed because they often might go fifty cents before these changes would show in a free market. Often twenty-five cents would represent the difference in a week's trading. But in a market that has been controlled since 1940 it has seldom moved by as little as twenty-five; it has usually moved two or three cents at a time.

Q. You say sometimes they would not always go to the twenty-five cents?

A. That is right.

Q. Did the manufacturers after this E. & M. J. figure had been used as a basis, did the manufacturers all take the same increase or decrease to your knowledge?

A. To my knowledge they did. It is most important that they do so.

Q. Because it was the basis of your whole price system?

A. Yes. We were not buying copper either ahead or contracting ahead for copper. We were only able to buy day to day.

Q. Then you say to your knowledge this was not discussed or agreed upon at a meeting? Did you exchange information between manufacturers as to the amount of increase or decrease that you would take based on the E. & M. J. average figure, before adjusting your prices?

A. Yes, we did.

Q. And was that done by telephone?

A. Usually by telephone; the reason being normally it was never possible to follow the market within five cents or ten cents or twenty-five cents. So normally it was necessary to have someone to decide what the price would be and to keep track of the cumulative total which might result in a fifty cent increase this move and the next time a seventy-five cent decrease.

Q. And who functioned in that capacity in the industry?

A. If you will give me the memo I will tell you again, but I believe it was Canada Wire.

(Evidence, pp. 1930-1933)

It will be noted that Mr. Bell thought it "most important" that all manufacturers should give effect to the same increase or decrease following a change in the base price of copper because it was the basis of the price system in the industry.

3. Power Cables

Power cables are a highly fabricated and complex product. They are usually manufactured according to the detailed specifications of the particular customer. While they include all the high voltage cables, the interested manufacturers distinguish between cables with a voltage above 15,000 and those below 15,000 for purposes of price arrangements. The evidence shows that the pricing of cables below 15,000 volts has been generally systematized and reduced to price books and price folders, whereas those of more than 15,000 volts are subject to special consideration for pricing when the occasion arises.

The manufacturers engaged in the production of power cables are Northern Electric, Canada Wire and Cable, Phillips Electrical Works, Canadian General Electric, and Cables, Conduits and Fittings.

Boston Insulated Wire and Cable manufactures varnish cambric braided and lead-covered cables for which prices and the procedure for determining them are found in the power cable price folders. All of these companies had price books on power cables which, prior to 1951, according to the evidence, had been prepared and issued by Northern Electric after discussion with its competitors. These Northern price books were retained at the head offices of the companies and were not available to customers.

Cables, Conduits and Fittings began to manufacture varnish cambric and paper insulated lead-covered cables (P. I. L. C.) in the fall of 1940. On October 15th, 1940, K. P. Macpherson, of Northern Electric, wrote to T. A. Gass, of Canada Wire and Cable, and P. A. Timmons, of Automatic, as follows:

> Mr. Longtin was in my office last week and requested me to give him full information on Varnished Cambric Braided and Varnished Cambric Lead Covered and P. I. L. C. Power Cables. He informed me that they would be manufacturing cables of the above description up to 13,200 volts in the near future.
>
> They are at the present time installing the impregnating tanks for P. I. L. C. cables and must have purchased new testing equipment since they were only able to test 600 volt cables up until a few months ago.
>
> He had the usual story about having been forced into this field by the loss of business which he considered was primarily his.
>
> I told him I did not believe that. I am quite satisfied in my own mind that it is their intention to expand to manufacture a full line of wires and cables just as soon as they can.
>
> I think the three of us should discuss this matter Friday.
>
> I dare say that the C. G. E. will not be long in following suit.
>
> (Exhibit 110)

In his evidence Mr. Macpherson could not recall whether or not this matter was discussed but pointed out that Cables, Conduits and Fittings -

> . . . went into the business. Nobody has ever tried to go into the wire and cable business in this country that they did not go into it.
>
> (Evidence, p. 293)

The evidence shows that Northern Electric for many years prepared cost studies on power cables, submitted proposed new prices to the other manufacturers, and after discussion at meetings or by

memoranda issued price folders embodying the prices on which agreement had apparently been reached. For example, in 1938 Northern prepared suggested prices for paper insulated lead-covered cables, rubber insulated lead-covered cables, and varnish cambric insulated lead-covered cables, and circulated them to Canada Wire and Cable and Phillips Electrical Works. The three companies were the only manufacturers capable of producing these cables at that time. (Evidence, p. 1683). Mr. Macpherson wrote the following memorandum in this connection on February 18th, 1938:

> As promised you last Tuesday, I am attaching the cable prices discussed.
>
> (Exhibit 26)

The copy of this memorandum found in the files of Canada Wire and Cable reads as follows:

> As promised you last Tuesday I am attaching the cable prices discussed & agreed to.

The phrase "& agreed to" had been added by Mr. Gass in his own handwriting. (Evidence, p. 1682). In evidence Mr. Gass said:

Q. You say that the "& agreed to" meant an agreement by you. With whom were you agreeing?

A. Mr. Macpherson.

Q. And Mr. Timmons?

A. I presume with Mr. Macpherson.

Q. Is this the type of information which was exchanged between manufacturers in connection with prices or changes in prices?

A. These are price studies based on prices that had been made up in our company and other companies have made them up and endeavoured to arrive at a satisfactory price on checking certain price lists that were available. As you will notice, in these price studies there are only spot sizes here and there; it is not in a general price list, just different items taken from a price list and checked as to cost.

Q. Then, I take it from what you said, that your company would check this against their costs or had previously done so?

A. Had previously done so and agreed.

(Evidence, pp. 1683-1684)

Examined on Exhibit 26, Mr. Macpherson said:

Q. Were you in the habit of sending out price sheets on cable prices for them to study?

A. That has been done. They have sent them to us for study.

Q. With what object?

A. The object of setting up a fair price.

Q. What do you mean by a fair price?

A. One with a reasonable amount of profit in it and one that is not detrimental.

Q. Reasonable to whom?

A. To people who are going to buy.

Q. And as manufacturers did you feel you were in the best position to determine what was reasonable to the people who were going to buy?

A. We have a broad knowledge of what things are worth and what represents a fair price and what would be an unfair price.

Q. And that was the purpose of sending out cable prices for study to other manufacturers, for the purpose of arriving at what the manufacturers thought would be a fair and reasonable price to the customers?

A. Right.

Q. Did you also have regard to what would be the profit element to the manufacturers?

A. Very definitely.

Q. You said this document might have been sent out for one or two reasons, one for the purpose of having the other manufacturers or competitors studying these prices, and the other thing you said, I think, was it might be new prices you would be putting into effect?

A. New prices the group would be putting into effect.

Q. At any time these prices were sent out with the purpose of putting them into effect, it would be as a result of a study or agreement which would have been made by the group?

A. That is correct unless I was asked to get some specific thing for a member of the group that asked that to be done. If it concerned him only, it would be done. If it concerned other people, they would be consulted.

(Evidence, pp. 84-86)

In the latter half of 1947, the last of the wartime controls affecting wire and cable products having been removed, a new price-set-up for power cables was in order. In July and August 1948, after discussion with the other manufacturers, Northern Electric prepared and circulated to its competitors a new series of power cable price books. (Exhibit 132). When these prices were revised, Northern prepared and circulated revised price sheets. Power cables were on the agenda of a number of meetings of representatives of the manufacturers, including those held on August 19th, 1948, March 2nd, 1949, and August 17th, 1949. (Exhibit 99).

When the other manufacturers received the new power cable price books from Northern Electric, the evidence establishes that they reproduced them under their own name. For example, Exhibits 253 and 254 were identified by V. N. Longtin as the power cable price sheets of Cables, Conduits and Fittings. He added:

> Those would be the sheets we receive from the Northern Electric Co., or copies of those sheets.
>
> (Evidence, p. 852)

On examination Mr. Longtin said:

Q. I note that these documents comprising Exhibit 253 have a letterhead on them "Cables, Conduits & Fittings Ltd." Now when you said this is what you received from the Northern Electric, I take it, it is the information, then you have it typed on your own letterheads?

A. Yes, different copies for different pricing departments.

(Evidence, p. 852)

J. H. Pryce identified a power cable price book of Canada Wire and Cable. (Exhibit 380). In evidence he said:

Q. Now, in this exhibit that has just been filed, Exhibit No. 380, were these prices in the first instance prepared by your company or did you receive all of them including the control cable prices from another manufacturer?

A. That is in that book?

Q. Yes.

A. They were prepared by another manufacturer.

Q. Did Northern Electric prepare all this price information?

A. Yes, I believe so.

Q. Including control cables?

A. Yes.

(Evidence, pp. 1820-1821)

F. W. Barnhouse identified a power cable price book of Canadian General Electric (Exhibit 330), and said:

A. Those are our own price books; they are not the Northern Electric. Information was copied from information we got from Northern Electric Company. Those are our own ---

Q. This is your own typing or printing?

A. That is right.

Q. On your own letter head, but the information on which these books were prepared was received from the Northern Electric Company? Is that correct?

A. That is right.

(Evidence, p. 1538)

The power cable price books issued by Northern in 1948 and adopted by its competitors listed prices in detail and included an example to show how prices were to be computed. In addition to prices, the new price books or folders included lead and copper base prices, shipping weights, maps setting out the freight zones, freight rates to be used in computing the shipping charges to various destinations, quantity discounts and other relevant material. To determine a delivered price for any of the various types of power cable, all of these factors had to be taken into account. The evidence shows that in order to avoid errors in arithmetical computations or in the interpretation of pricing formulae, the manufacturers checked with each other the prices they computed and proposed to quote in respect of particular transactions.

While the new price books issued in 1948 and subsequent revisions were prepared and circulated to all the other power cable manufacturers by Northern Electric, the books as reproduced by the several manufacturers presented a striking difference: each company showed a different list price subject to a different price adjustment percentage. Each price book included a "Price Adjustment Sheet" which specified a "Percentage adjustment to list prices to compensate for increases or decreases in manufacturing expenses and raw

materials other than Copper or Lead". In the case of Northern Electric the percentage adjustment was nil and consequently the list prices were the net prices. (Exhibit 132). For the other companies the percentage adjustments to be applied to the list prices for paper insulated lead cable, varnish cambric and rubber insulated lead cable were as follows: Canada Wire and Cable, 25 per cent (Exhibit 380, Serial Nos. 5403 and 5454); Phillips Electrical, 50 per cent (Exhibit 154, Serial Nos. 4967, 5118, 5221); Canadian General Electric, 60 per cent (Exhibit 330, Serial Nos. 5695 and 5769, and Exhibit 331, Serial No. 6081); Cables Conduits and Fittings, 40 per cent (Evidence, p. 983).

As has been pointed out, the list price varied for each manufacturer and the net price was arrived at by applying the given percentage adjustment. On closer examination, however, and as indicated by witnesses, this proved to be but another calculated attempt at deception because, when the percentage adjustment was applied to the list price of each company, the net prices were identical with the net prices of Northern Electric. This complicated system of arriving at uniform prices was appropriately described as "camouflage". (Exhibit 126).

In evidence K. P. Macpherson, of Northern Electric, said:

Q. When these new books were prepared, with different figures and different discounts, were they separate books for each manufacturers?

A. Yes.

Q. And were the separate figures and separate discounts different for each manufacturer?

A. Yes.

Q. And were those figures agreed upon by the manufacturers before they were published by you?

A. My recollection is that the basic figures were.

Q. Could you tell us the purpose of this?

A. There was no purpose behind it -- to make them look different, perhaps.

Q. To make them look different to whom?

A. Each one would be working from a book of their own. They had their own employees.

Q. In the figures which were prepared for Northern Electric, that is your own, were there any figures as discounts, or did you work on a straight list price with no factor of adjustment?

A. There was a factor of adjustment in them all for the daily variation of copper and lead.

Q. Are there factors of adjustment in other than Northern Electric which are in addition to the factor of adjustment for copper and lead?

A. I think there was no discount applied to ours.

Q. That is to Northern Electric?

A. Yes.

Q. If you take the figures which appeared in these other lists, that is lists of other manufacturers which you prepared and sent out with the discount figure; if you corrected those figures with the discount, was the net result the same from company to company?

A. I believe so.

Q. And that was the purpose of it; isn't that correct?

A. The purpose of it was to arrive at the same price.

Q. But the purpose, as you said earlier, was to make it look different?

A. That is so.

(Evidence, pp. 160-162)

S. H. R. Clish, of Northern Electric, said that he originated the revised cable price folders and prepared different price adjustment percentages for different manufacturers on instructions from Mr. Macpherson. (Evidence, pp. 532-534).

J. H. Fitzgerald, of Phillips Electrical Works, said:

Q. But I would like to refer you to the sheet coded 2PEW1-5-3, Serial 5118, which is entitled "Price Adjustment Sheet". Could you explain what is referred to as the percentage adjustment?

A. The list prices are adjusted by that percentage to arrive at the basic price.

Q. That is the price at which you would quote?

A. Yes, and other adjustments as well, but that is the first adjustment.

Q. Is the percentage indicated on this sheet to which I have referred the percentage adjustment which is to be applied against the list price?

A. That is correct.

Q. Does this percentage adjustment vary from manufacturer to manufacturer?

A. Yes.

Q. Am I correct in my understanding when you apply the percentage adjustment against the list price in each manufacturer's book that you would eventually come out with the same end price?

A. You should.

Q. Could you tell us why this procedure was adopted, or was it adopted, before you came into the picture?

A. No, it was not adopted before I came into the picture, but I couldn't tell you why. It was just one of those things that somebody thought it was a good idea.

(Evidence, pp. 626-627)

Miss R. Martell, of Cables, Conduits and Fittings, said:

Q. Miss Martell, I will show you Exhibit 253, which was filed during the course of Mr. Longtin's examination. I understand this is the power cable book that was in use in your company?

A. Yes.

Q. Could you explain what is meant, or the purpose of this price adjustment sheet? I notice on this particular one under the price adjustment the word "nil" appears. To your knowledge, did there used to be a percentage adjustment in there?

A. Yes, there was at one time.

Q. What was that?

A. The last percentage adjustment was 40 per cent.

Q. Where did you receive the information from which these sheets were prepared?

A. This sheet you mean here?

Q. Yes.

A. That came from Northern Electric.

Q. You said the last percentage adjustment was 40 per cent. Did they print it on the sheet they sent you? The 40 per cent -- was it printed on?

A. Yes.

Q. And am I correct in my understanding, that when you took the list prices and applied the 40 per cent, that you would come out with an answer that would be the same as the other manufacturers were using?

A. I believe so.

(Evidence, pp. 982-983)

The practice of applying different percentage adjustments to list prices was discontinued in the fall of 1951. A document dealing with "R. I. L. C. Folder Prices", which was identified by D. C. Borden, of Northern Electric, as having probably been prepared by Mr. Clish, of that company, suggested that the system be changed:

5. The general make-up of the Folder will not change but it may be well to have the approval of all on the following:

> Price adjustment Sheet #1. 1. 2 which contained different percentage additions to List prices for camouflage purposes will be set up showing "NIL" under all voltages and sizes.

(Exhibit 126)

It will be noted that the document referred to "different percentage additions to List prices for camouflage purposes". When asked to explain the meaning of the term "for camouflage purposes", Mr. Borden said:

A. I do not know whether you took that up with Mr. Macpherson or not. These percentages which were handled in one case at 10 and in another case - I don't particularly like to deal with it because it is back beyond my time.

Q. You mean when you took over as Sales Manager these percentage additions to list price for camouflage purposes did not appear?

A. They were there.

Q. Supposing you tell us about it from your own experience?

A. As a matter of fact, it is one of the things that I have found kind of ridiculous. I do not like to criticize the predecessors but there was a scheme devised that one manufacturer would have a price that would work out to $1 with no discount and another person would have a price at $2 with a 50% discount. That appears to have been the system and I believe it is still in effect. It is just plain ridiculous as far as I am concerned.

(Evidence, pp. 499-500)

The evidence shows that Northern Electric prepared the price sheets and revisions for the power cable price books and circulated these to the power cable manufacturers until the fall of 1951. A "Master Book Mailing List Index" was found in the files of Northern Electric which included a card setting out the distribution of these power cable price folders, as follows:

POWER CABLE FOLDER RECIPIENTS

RECIPIENT	ARM. FLDR.	AERIAL CABLE	R.I.L.C.	V.C.	P.I.L.C.	CONTROL CABLE
MASTER	1	1	1	1	1	1
K	2	2	2	2	2	2
L's	2	2	2	2	2	2
L'n	3	3	3	3	3	3
F	3	3	3	3	3	3
B	2	2	2	2	2	2
A	-	-	-	1	(V.C. &B. only)	

(Exhibit 146)

S.H.R. Clish, of Northern Electric, identified "K" as Miss Kinsella of Canada Wire and Cable, "L's" as L. G. Lumbers of Canada Wire and Cable, "L'n" as V. N. Longtin of Cables, Conduits and

Fittings, "F" as J. H. Fitzgerald of Phillips Electrical Works, "B" as F. W. Barnhouse of Canadian General Electric, and "A" as G. W. Arnold of Boston Insulated Wire and Cable. (Evidence, p. 558). Pre-addressed envelopes bearing the names of the parties identified by Mr. Clish were found with the "Master Book Mailing List Index" in the files of Northern Electric. (Exhibit 147).

In identifying Exhibit 146, Mr. Clish said that it may no longer be up to date. He was apparently referring to the allocation in 1950 among the several manufacturers of the work of preparing cost studies and prices for the industry. (Exhibit 304). Under this allocation Northern Electric was to continue to be responsible for price information on rubber insulated lead cable, control cables, and armouring; Phillips Electrical Works on paper insulated lead cable; and Canadian General Electric on varnish cambric cables. However, the new distribution of work did not become effective immediately. It was not until October 1951 that Phillips issued a new price book on P. I. L. C. Northern continued to issue prices on varnish cambric, although early in 1952 Canadian General Electric sent out some price studies on this type of cable for consideration by the other manufacturers. In 1952 Canada Wire and Cable issued its own price book on P. I. L. C., which differed somewhat in form from Phillips' book.

After the meeting of January 24th, 1950, at which the manufacturers' representatives agreed to the new allocation of responsibility for preparing pricing information (Exhibit 304), the companies continued to discuss and to agree on prices and pricing policies for power cables. In a letter dated March 3rd, 1950, to branch offices and other personnel of Canada Wire and Cable, J. H. Pryce announced the immediate introduction of a scale of quantity discounts for the major types of power cable. (Exhibit 376). Examined on this document, L. G. Lumbers said:

Q. Do you remember whether on or about March 3, 1950, a quantity discount on the products indicated was adopted by all the wire and cable manufacturers?

A. Yes, it was.

Q. Was that a matter which had been discussed at a meeting of manufacturers?

A. Yes.

Q. Which you attended?

A. Yes.

Q. As a result of the discussions was it agreed to adopt this quantity discount?

A. Yes, it was.

(Evidence, pp. 1787-1788)

These quantity discounts appear in the power cable price book prepared by Northern Electric and formed part of the pricing information distributed to the other manufacturers. They were also included in the power cable price books subsequently issued to their customers and to the other manufacturers by Phillips Electrical Works and Canada Wire and Cable.

A number of documents found in the files of Northern Electric show that in the fall of 1951 Northern was preparing price revisions for rubber insulated lead covered (R. I. L. C.) power cable. Exhibit 126, entitled "R. I. L. C. Folder Prices", suggested an increase in list prices of 13 per cent and other changes. D. C. Borden, of Northern, identified the document and said:

Q. Was this memorandum purely an inter-office memorandum or was it circulated to your competitors?

A. I really don't know. At some time the information was given. I am inclined to think that is the initial plan that Clish brought to me for the approval of the principle.

Q. Were these prices increased by 13% to cover 11% increase and 1.85% sales tax increase?

A. Yes, the prices were increased. I do not know whether this was the final formula or not, but there was an increase in rubber insulated cable.

Q. So that after certain price studies had been made by Mr. Clish were the results of these studies discussed with the other manufacturers?

A. Yes.

Q. And were the new prices, that is, the increased prices, arrived at after these discussions with the other manufacturers and an agreement reached as to the new prices?

A. It was like some of these other negotiations. The general principles were talked about, and this is a hypothetical case because I don't know what actually happened in this particular one. There would be general discussion as to whether the profit on this family as Clish thought was adequate and an agreement would be reached that it is or is not and the industry is felt out whether cost changes justified a change in the price level.

(Evidence, pp. 491-492)

J. H. Fitzgerald, of Phillips Electrical Works, said:

Q. I believe you mentioned in our discussion this morning that RILC prices were prepared by the Northern Electric Company?

A. That is correct.

Q. And is it also correct that when they have been preparing this price information they have on previous occasions consulted the other manufacturers including Phillips Electric with regard to the proposed prices which were to be used for the RILC folder?

A. If there were any basic changes in the prices set up, yes.

Q. Do you recall whether in the Fall of 1951 and in October or November whether the Northern Electric was revising its RILC information?

A. They were under review at that time.

Q. And when they were under review was your Company consulted by the Northern Electric with regard to these proposed prices?

A. Yes, if there was any change in them from the previous practice.

Q. You say if there was any change. Do you recall whether there was any change last Fall?

A. I believe there was with some sizes.

(Evidence, pp. 658-659)

A pencilled memorandum dated October 17th, 1951, relating to the revision of R. I. L. C. prices was identified by M. R. Macdonald, of Northern Electric, as having been written by him. (Exhibit 149). The sheet appears to set out the procedure for obtaining the approval of the other manufacturers and for issuing the new prices. A notation on the top right-hand corner reads:

Cleared with Fitz, Price
Price will clear Barnhouse

The memorandum also states:

We propose mailing R. I. L. C. suggested prices to C. G. E., C. W. C., C. C. E for their approval -- prior to Fitz starting his printers working. Does he agree. If so would advise them that

any suggested changes they might have must be in our and Fitz's hands not later than Friday Oct. 24th.

(Exhibit 149)

With respect to this memorandum Mr. Macdonald said:

Q. I show you a document coded 3NE7-7-1 and the reverse of the document is coded 3NE7-7-2. The Serials are 4401 and 4402. Could you identify whether that is your handwriting or could you tell us whose handwriting it is?

A. That is my writing.

Q. And this is dated October 17th, and do you remember whether that was 1951?

A. Yes.

Q. It was 1951?

A. Let me read it?

Q. Yes.

A. Yes, 1951.

Q. At the top right hand corner it says: "Cleared with Fitz, Price Price will clear Barnhouse". Who is Fitz, Pryce and Barnhouse?

A. Mr. Fitzgerald of Phillips, and Mr. Pryce of the Canada Wire & Cable, and Mr. Barnhouse of Canadian General Electric.

Q. Can you explain what you were to clear with these gentlemen?

A. Rubber insulated prices.

Q. Were changes being made in RILC prices at this time?

A. Yes.

Q. Were you discussing these changes with them?

A. We had discussed them with them.

Q. Had you prepared certain adjustments or changes to these prices, or had they prepared them or who had?

A. To the best of my knowledge we prepared them. There is a little doubt in my mind there, but I am reasonably certain they were prepared by us.

Q. Subsequently was an agreement reached between Northern Electric, Phillips Electric and Canada Wire & Cable and the Canadian General Electric as to what these prices should be?

A. Yes.

Q. Were these prices subsequently taken into use in the industry?

A. Yes.

Q. Those manufacturers all used the same prices, that is, the prices which had been agreed upon?

A. Well, I would say I would be of the impression that they were.

Q. As far as you know, they did?

A. Yes.

Q. If they had not it is likely you would know about it, is it not?

A. Yes, very likely.

(Evidence, pp. 581-583)

Another pencilled memorandum written by Mr. Macdonald and dated November 9th, 1951, says that "CWC now agree to our set-up" and "OK with Phillips". (Exhibit 150). The new R. I. L. C. prices were put into effect on November 19th and 20th. (Exhibits 132, 142, 253). The percentage adjustment system was discontinued and all manufacturers used net prices.

New specifications for paper insulated lead covered (P. I. L. C.) power cable were also worked out in the fall of 1951 (Evidence, p. 529), and it was arranged that Phillips Electrical would prepare a new price book for this product. In reference to this book, J. H. Fitzgerald, of that company, said:

Q. Prior to that being taken into use was that discussed at a meeting or meetings of manufacturers?

A. Yes, it was.

Q. It was arranged and agreed that Phillips would prepare this?

A. Yes, that is correct.

Q. And subsequently it was prepared?

A. Yes.

(Evidence, p. 624)

D. C. Borden, of Northern Electric, said that meetings of the representatives of the manufacturers had taken place in September 1951 and in November 1951. He said further:

Q. When the Phillips PILC book came out, had that been discussed at one of these meetings or was it discussed before it was adopted?

A. There were discussions of the contents before it was adopted, yes.

(Evidence, p. 425)

The new P. I. L. C. price book was issued by Phillips on October 1st, 1951, and the new prices became effective on October 9th. The book superseded the previous prices prepared by Northern, except for cable required to the specifications listed in the old book. (Evidence, pp. 529-530, 981). In a memorandum to the other manufacturers dated November 16th, 1951, Phillips advised that special instructions covering the new price book would be issued in a few days. (Exhibit 138). Copies of these instructions set out the procedure to be followed in working out the prices. (Exhibits 141, 174).

Examined with respect to instructions on P. I. L. C. cable prices contained in a memorandum dated November 9th, 1951, J. H. Pryce, of Canada Wire and Cable, said:

Q. Do you recall whether the question of adjustments in the price of PILC cable in October or November of 1951 was discussed by the manufacturers of this cable?

A. Yes.

Q. As a result of such discussions, were any changes in the price of PILC cable made?

A. Yes.

Q. Did these discussions take place at any meetings which you attended, or was it by memorandum?

A. I believe it was both.

(Evidence, p. 1837)

Under the allocation of pricing functions early in 1950, Canadian General Electric assumed responsibility for varnish cambric prices. Nevertheless, as late as December 1951 Northern Electric

continued to prepare price information on this product. On December 11th, 1951, S. H. R. Clish, of Northern Electric, circulated the following memorandum under the heading of "Varnish Cambric Folder":

> We are forwarding, herewith, several Varnish Cambric Price sheets and would ask you to incorporate them in your Price Book along with sheets forwarded to you a day or so ago, destroying the existing sheets in the folder in your possession. You will note that we have included in the attached group of sheets, Page 1.1.3 "Percentage Adjustment Sheet" showing Nil under Percentage Adjustment. When using these new sheets it will no longer be necessary to make any percentage adjustment, as now the list price contains any adjustment previously required.
>
> (Exhibit 139, p. 2)

It will be noted that the percentage adjustment was discontinued. Mr. Clish said in evidence:

> Basically, that percentage adjustment, as you have determined, gets you back to the same price. This memo was sent out by me and I saw that it had no significance so I discontinued it.
>
> (Evidence, p. 540)

On January 24th, 1952, F. W. Barnhouse, of Canadian General Electric, circulated a memorandum to the other manufacturers on varnish cambric cable prices. The memorandum reads as follows:

> We are attaching information concerning a study made on V.C. Braided and V.C.L.C. cables.
>
> You will note that for the purposes of the price study a 5% exchange rate was used. In view of its appreciation in recent weeks some of the proposed price increases are not as great as might be expected from the data presented.
>
> Although our price study covered a considerably broader range, we are only attaching three sheets to indicate the present relative prices.
>
> It would be appreciated if you would review this data and advise your comments at your earliest convenience in order that we may start our revision.
>
> (Exhibit 140, p. 1)

On February 7th, 1952, Canada Wire and Cable replied as follows in a memorandum which was unsigned and showed no point of origin but the source of which was identified by a process of elimination:

With reference to B's Memo of January 24th we have calculated prices on various sizes and voltages of cable using the method outlined.

While this method is agreeable to us we would prefer to see the prices brought more in line with the U.S. landed prices listed.

(Exhibit 140, p. 13)

In evidence Mr. Barnhouse said:

Q. And who is that from?

A. I assume that is from the Canada Wire & Cable Company. There is no identification.

Q. Well, speaking from your own personal knowledge, you have indicated that these studies were prepared and that the memoranda were sent out by your Company, is that correct?

A. Yes, sir.

Q. Now, have you received comments in from the other manufacturers?

A. I think on the telephone they have indicated they found them acceptable.

Q. And have you started your revision or is it now completed?

A. No, we have not started our revision.

Q. You have not started it yet?

THE COMMISSIONER: What form did the comment take? Did you get memos or were there telephone calls?

A. There is one memo here. I believe the rest were just telephoned: "It looks all right to us".

(Evidence, p. 1580)

On February 18th, 1952, Canadian General Electric sent out another memorandum revising the suggested prices on varnish cambric cables:

Further to data presented on January 24th we are attaching a summary of revised American and Canadian V.C. cable prices.

Shortly after our original study was completed American prices changed and it was felt desirable that a new study should

be undertaken. This has been completed and suggested increases are listed on the attached sheets. It is proposed that these increases supersede those put forward on January 24th.

For the purposes of this study, the following formula was used in determining American landed prices.

American Landed Price = Best U.S. Price - 5% (disc.)

+ 1% (exchange) + 20% (duty)

+ 10% (Federal Sales Tax)

+ 2% (Freight)

= U.S. Price x 1.29

Your early comments will be appreciated.

(Exhibit 140, p. 7)

S.H.R. Clish, of Northern Electric, testified that he had not replied to the foregoing and that his company was checking its costs to determine whether the proposed price increase was warranted. He explained that Canadian General Electric was making the price study on this product for the following reasons:

A. The other manufacturer has better contact with the availability of American prices on this particular product and he has made, in all probability, a study here as you notice in the contents where he is using American prices. It is a product that has to always take the American prices into consideration but to always be sure that the price to our Canadian customer is lower than the lowest American imported price, to the lowest American price, and that is what the Canadian General Electric are making a check into, knowing at the same time that there has been rising costs independent of raw materials and feeling that something should be done about varnished Cambric.

(Evidence, p. 542)

The matter of varnish cambric prices not having been finally disposed of, the price books originally issued by Northern Electric continued in force. (Evidence, pp. 663, 1624-1625).

Early in 1952 price studies were also being made on control cables. On March 21st, 1952, Canada Wire and Cable circulated the following memorandum (unsigned and with no indication of source):

As advised in our recent telephone conversation with M's office, we propose adding list prices for Control Cables to our

new Power Cable Price List Folder. We have calculated these prices from the previous lists, making adjustments for $21.50 Copper and $17.50 Lead, plus an additional 1.85% for sales tax.

We are enclosing a set of the prices we propose listing and, unless we receive your objections to these before Wednesday, March 26th, we will assume they meet with your approval.

It will be noted on the Braided type we propose quoting the same prices for P.V.C. as for Rubber Insulated, which we trust will also be quite satisfactory.

(Exhibit 116, p. 1)

Attached to this document was a pencilled note containing the views of Phillips Electrical Works. (Exhibit 177). In his evidence Mr. Fitzgerald, of that company, said:

Q. I am also showing you Exhibit No. 116 which, I am informed, had originally been attached to this Exhibit No. 177 which you have just identified. Could you identify Exhibit No. 116 which, I am informed, was also removed from your files?

A. Yes, this is a memo from the Canada Wire & Cable Company suggesting prices for control cable.

Q. Do you know whether these prices which are suggested by the Canada Wire & Cable Company were subsequently adopted?

A. I believe they were. I am not sure they have been in the form of a book or not.

Q. Could you say whether you or your Company raised any objections to these prices? I note in the second paragraph of the memorandum that there is a suggestion that if you have any objections you should so inform them.

A. Exhibit No. 177, I believe, gives our views on it.

Q. That states that your Company is in agreement with the method; is that correct?

A. Yes.

Q. At the time of this memorandum from the Canada Wire & Cable Company, that is, on March 21, 1952, was that Company responsible for the preparation of price information on control cables?

A. No, I don't believe so but, as I pointed out this morning, anybody is entitled to make a suggestion.

Q. Who was responsible for control cables?

A. I believe that Northern Electric was.

(Evidence, pp. 667-668)

F. W. Barnhouse, of Canadian General Electric, said:

Q. I show you Exhibit 116. This is dated March 21st 1952 and deals with the subject of control cables. Who in March 1952 was preparing price information on control cables?

A. Normally the Northern Electric Company.

Q. I think, from the first sentence in this document that it was not the Northern Electric Company that sent it out.

A. This particular study, that is correct.

Q. Do you know who prepared this study?

A. Canada Wire & Cable Company.

Q. And this indicates that these proposed prices were being submitted for your consideration and if there were no objections that they would be adopted, is that correct?

A. That is what it says, sir.

Q. And do you still suggest that there is no agreement as between manufacturers on the prices?

A. I suppose when you don't take exception you are agreeing, one or the other. Normally we would not have enough data accumulated to comment too quickly. At a later date if we found prices too high we would carry on discussion as to changes.

Q. Wouldn't you say from the various documents that we have looked at to-day, that it is contemplated that contrary-minded comments might be received and that it is also contemplated that proposed prices would not be put into effect if there are objections? Wouldn't you say that that was a fair conclusion to draw from the type of wording that has appeared in these various memoranda that we have considered?

A. I would say it is a good understanding of the mechanics.

(Evidence, pp. 1582-1583)

In the spring of 1952 Canada Wire and Cable issued its new P.I.L.C. power cable price book. (Evidence, p. 1621). Although the book differed somewhat in form, the prices for similar specifications were identical with those in the book issued by Phillips Electrical Works. Canada Wire sent copies to its competitors and issued revision sheets from time to time.

On March 25th, 1952, J. H. Fitzgerald, of Phillips, circulated a memorandum drawing attention to differences he had noted between the power cable price book issued by his company and the new book issued by Canada Wire and Cable:

> On checking L's insulation and lead thicknesses published in his new paper power folder, we find differences in one insulation and eleven lead thicknesses to that which we have tabled for single conductor cables.
>
> . . .
>
> (Would L's please comment)
>
> (Exhibit 123, p. 1 and
> Exhibit 178, p. 1)

In evidence J. H. Pryce, of Canada Wire and Cable, said:

Q. Would the "L's" which appears at the bottom of the document where it states: "Would 'L's' please comment", does that refer to your company?

A. Yes.

Q. Who is referred to as "F's"?

A. Phillips.

Q. Do you recall whether this was after you had published your new PILC price book?

A. Yes.

Q. Was this a comparison between certain insulation and thicknesses in your book as compared with the Phillips' book?

A. That is right.

Q. Do you remember following receipt of this document did you make any changes in your price book in your insulation and thicknesses?

A. We made one or two changes where it was definitely a mathematical error in the diameter.

(Evidence, pp. 1848-1849)

In answer to questions on the respective power cable books issued by Phillips Electrical Works and Canada Wire and Cable, which are now used by the interested manufacturers, Mr. Pryce said:

Q. Do you still receive from the Phillips Company price information on PILC?

A. Yes.

Q. Is your book computed on the basis of information received from them?

A. It is computed on the basis of their price book.

Q. Do you rely on their information in the prepartion of your prices in this book?

A. Not entirely.

Q. Is there any difference to-day in the prices as set out in the Phillips book and the prices set out in the CanadaWire & Cable Company book?

A. As far as I know, there is not.

Q. If there is, is that by chance rather than by design?

A. It could be by design in that our price book differs from the Phillips book in the way we list our prices by voltages and undoubtedly we will have prices in there that they do not have. Their prices are listed by insulation and thickness.

Q. When you use either one of the books should you come up with the same answer in computing a price on the same product?

A. Yes, I would say so.

Q. When did your power cable price book come into use?

A. In February.

Q. This year?

A. This year.

Q. Was the Phillips power cable book in use prior to that date?

A. Yes.

Q. Do you remember when theirs came into use?

A. I believe either October or November.

Q. Do you advise the phillips Company of any changes or revisions in your PILC book?

A. Yes.

Q. And similarily, do you receive from them changes in their book?

A. That is right.

(Evidence, pp. 1817-1819)

4. Tenders

The wire and cable companies sell large quantities of products directly to departments of the Federal and provincial governments, municipalities, Crown companies, railways and airlines, public utilities and other large users. Sales to these customers are generally made after the submission of tenders by a number of manufacturers. The evidence establishes that before submitting tenders the manufacturers have usually advised each other by memorandum or by telephone of the prices they proposed to quote. Where differences were found to exist, further discussion by an exchange of memoranda or otherwise has taken place, prices were checked, and differences were reconciled in order to ensure that the prices quoted by each manufacturer would be identical. Consequently, identical prices were submitted by agreement or arrangement in nearly all cases where tenders were called.

The system was described by J. H. Fitzgerald, of Phillips Electrical Works, as follows:

MR. HUNTER: Q. On the question of these special items which would be referred by your branch offices to your office on tenders, that is, where it was a special type of product or perhaps a quantity of the product being ordered and it was decided to refer it to the head office of the Phillips Company, was there any interchange of information between your company and the other manufacturers who might also be interested in such a tender, an interchange of price information?

A. Yes, if we couldn't price it from a list.

Q. What form did that interchange of information take?

A. Either telephone or this circulating memo, as you call it.

Q. Did you ever by telephone or by these memos advise the price which the Automatic Electric Company proposed to quote on this particular tender?

A. Yes.

Q. It would always be the Automatic Electric Company that would be quoting?

A. Yes, that is correct; in their name.

Q. But it would be the Phillips Company that would sendout the information as to what the Automatic Electric proposed to quote?

A. Yes.

Q. Did you also receive from other manufacturers memos or telephone calls indicating what they proposed to quote?

A. Yes.

Q. I suppose that in your particular case you would work out a quotation on the basis you have indicated, that is, from any price information that you might have from your Costing and Estimating Division figures?

A. Yes.

Q. And the other companies would, presumably, do the same?

A. Yes.

Q. The fact that the quotations are the proposed-to-quote figures would not always be the same from one manufacturer to another?

A. No.

Q. Was there between the time you worked out these proposed-to-quote figures an arrangement or an agreement or a unanimity between the manufacturers as to how the quotation would finally go in?

A. As a rule, yes.

Q. Was that the purpose of exchanging this information between manufacturers?

A. I would say it was.

Q. As far as you were concerned that was your understanding?

A. That is correct.

Q. And if you found that some of your competitors were proposing to quote a higher figure than you had prepared, did you then adjust your figure and increase it to theirs?

A. Not necessarily.

Q. Then in cases where you did not, I take it, that they lowered their prices to meet yours?

A. Yes, that is correct.

Q. Where there was a variation by a manufacturer from the figures that he had originally worked out to the final quotation, to that extent the final quotation really had little relationship to his cost estimates?

A. Yes.

Q. Was that system of exchanging information with a view of having uniformity in tenders worked out over a period of time?

A. It goes back beyond my time.

(Evidence, pp. 616-619)

J. H. Pryce, of Canada Wire and Cable, said:

Q. What was the purpose in the interchange of these memoranda as between manufacturers on special tenders, the same?

A. To obtain uniformity of price.

Q. On tenders?

A. Yes.

(Evidence, pp. 1807-1808)

T. J. Bell, of Federal Wire and Cable, said:

Q. Have you received from your competitors information as to the price they propose to quote?

A. Yes.

Q. What is the purpose of that?

A. As I described previously to you, we have a price book and a price book is a rather difficult thing to interpret. It cannot be interpreted by a layman nor can a layman work out a tender from that price book. Normally, in the

interests of uniformity we will sometimes consult with our competitors to make sure that our quotations are in conformity with that "price book".

MR. HUNTER: Q. You are referring to your price book when you say "that price book"?

A. That is correct.

Q. You exchanged this information with your competitors to see if your quotation confirms with your own price book?

A. That is right.

Q. You say "in the interests of uniformity". Do you mean in the interests of uniformity with other manufacturers on the tender they propose to quote?

A. That is correct.

Q. Has that system been in existence for some time?

A. I would say it has been for quite some time.

(Evidence, pp. 1866-1867)

The exchange of information on tenders has been effected most frequently by the circulation of unsigned memoranda which were typed on plain sheets of paper, as already described. The system has been in existence for many years. For example, on May 12th, 1933, K. P. Macpherson, of Northern Electric, circulated a memorandum to the representatives of five other manufacturers with reference to Radio Corporation Limited, Winnipeg, in which he said, in part:

> The following prices are being quoted to the marginally noted customer for their 1933 requirements. Delivery of material is to be made within six months from date of order.

(Exhibit 7, p. 5)

In a memorandum dated February 22nd, 1938, to Messrs. Macpherson of Northern Electric, Timmons of Automatic Electric, Leary of Canadian General Electric, Gass of Canada Wire and Cable, and Arnold of Boston Insulated Wire and Cable, J. G. Smith, of Federal Wire and Cable, outlined his understanding of the practice of the industry at that time with respect to quotations on tenders:

> It is our understanding that when a price is to be quoted, other than that in our regular set up, it is usual to take this matter up prior to the price being quoted.

G. states in his letter that our memo did not arrive early enough. Other interested parties received other copies early enough for discussion, and I might state that we replied to G's memo on the 18th instant, the date upon which his memo was received.

(Exhibit 391, p. 3)

In a memorandum dated May 9th, 1938, T. A. Gass, of Canada Wire and Cable, advised P. A. Timmons, of Automatic Electric, as to prices which it was proposed to quote to the Canadian Comstock Company Limited and added -

If you are in agreement with these prices as absolutely net, I would appreciate your advice in Wednesday morning's mail, if possible.

(Exhibit 234, p. 2)

Early in 1939 the Northern Telephone Company, a Canadian company, asked for quotations from the General Cable Corporation in the United States. The latter company was at that time a shareholder of Canada Wire and Cable and referred the request to the latter. The usual exchange of pricing information then took place, as is evidenced by the following letter of February 4th, 1939, from P. A. Timmons, of Automatic Electric, to T. W. Brackinreid, of Phillips:

It has come to our attention that the Northern Telephone Company are requesting American manufacturers to quote them on Lead Covered Telephone Cable. They sent their inquiry to the General Cable Corporation only, who in turn advised the Northern Telephone Company that they were referring this inquiry to their Canadian connection. When G. got it he sent it along to M. and M. has promised me that he will check with us before quoting G. Gass has also promised to show me a copy of the inquiry. Will you, therefore, be good enough to warn Mr. Simpson to watch any memos that may come in from the N. E. C. on Lead Covered Telephone Cable and make sure that the prices are in line with what we would usually quote for this customer.

(Exhibit 243)

"G" was Gass of Canada Wire and Cable and "M" was Macpherson of Northern Electric.

On June 14th, 1939, after the Defence Purchasing Board had been set up by the Federal Government, Mr. Timmons wrote to Mr. Brackinreid as follows:

Quotations for Wires and Cables,
Department of National Defence.

It has been suggested by our friends that in view of the fact that the Purchase Board in Ottawa may become too inquisitive

in respect to agreed prices being quoted for the Department of National Defence, prices should be staggered. In other words, the business should be allocated. This suggestion is made for quotations valued at $1,000.00 and over.

Messrs. Macpherson and Gass are taking this question up with their principals and intend to be in a position to discuss this matter at the next Manufacturers Meeting, which will be held the week of July 10th.

Your comments on this suggestion will be appreciated.

(Exhibit 245)

In evidence, Mr. Brackinreid said that he did not think that Mr. Timmons' proposal was adopted and that the manufacturers continued to operate on the basis of submitting agreed prices. (Evidence, p. 830).

The evidence shows that in submitting tenders to the Department of Munitions and Supply and Crown companies established by that Department, the wire and cable manufacturers pursued their established policy of exchanging information on prices, agreeing on prices, and submitting uniform tenders.

On May 21st, 1940, T. A. Gass, of Canada Wire and Cable, sent the following memorandum to six other manufacturers with reference to tenders submitted to the Department of Munitions and Supply:

We are informed by the above Department that the tender numbers referred to above have been placed elsewhere with a saving in price, from which it would appear that this material may have been placed with some outside jobbers.

In view of this, I would like to suggest that each one of the persons to whom this memo is addressed, advise the others if they have been awarded or should be awarded any of the above tenders, and if it develops that the tenders have all been placed outside of our group I believe we should give the matter serious consideration as to future policy.

(Exhibit 348, p. 12)

On September 10th, 1940, Mr. Gass advised the other manufacturers on a price quoted to Canadian Wrights Limited, and added:

We overlooked that the schedule price for the item is $77.00 but as we cannot withdraw our quotation will have to allow it to stand.

We will quote in accordance with the schedule on all future enquiries.

(Exhibit 348, p. 14)

On December 12th, 1940, Mr. Gass circulated the following memorandum with respect to a tender to be submitted to the Department of Munitions and Supply:

> The above Tender, calling for Cab Tire, Single Conductor, would in my opinion be quoted at the Zone #2 list with a discount of 6%.
>
> It was my definite understanding at the last gathering that although we were giving 15% on other types of Cords and on Code Wire, that on Rough Usage which was not generally considered a Jobber line, we would only allow a discount of 6%. Will you please confirm that this is your understanding.
>
> On the above-mentioned basis, the price of the cable itself would be $308.65 per M. ft., delivered Halifax.
>
> (Exhibit 348, p. 15)

On December 13th, 1940, J. G. Smith, of Federal Wire and Cable, replied by memorandum as follows:

> It has been our impression that Cab Tire Cables came under the heading of jobber items, and had we not received this memo from G., we would have allowed the 15% discount on this item on the above inquiry.
>
> However, if it is agreeable to other interested parties, we will quote the same price as G., but we trust this will be agreed to by all, prior to the closing date of the tender.
>
> (Exhibit 391, p. 13)

It will be noted from the foregoing that Federal Wire and Cable would have quoted a lower net price to the Department of Munitions and Supply but for the agreement or arrangement among the manufacturers to quote identical prices on tenders.

A series of circulating memoranda dated in 1941 and 1942, and dealing largely with prices to be quoted on tenders to the Department of Munitions and Supply and to Crown companies on special types of cable, were filed as exhibits in the course of the hearings. (Exhibits 280, 153, 281, 282, 283, 350, 323, 285, 286, 157, 354, 158, 27, 356). These memoranda evidence the usual exchange of price information among the companies, as well as meetings and discussions with a view to agreement on prices. While the pressure to meet urgent war requirements for new types of products necessitated and justified meetings, discussions and joint decisions on the war production problems suddenly faced by the industry, the evidence shows that, insofar as setting prices for these products was concerned, the wire and cable companies continued to pursue their normal pre-war policy and practice of agreeing on and submitting uniform tenders.

Examined on Exhibit 27, which was a memorandum dated September 26th, 1941, and circulated by J. H. Fitzgerald, of Phillips Electrical Works, advising the other manufacturers of the prices this company proposed to quote to Federal Aircraft Limited, Mr. Fitzgerald said:

Q. I show you Exhibit No. 27, dated September 26, 1941. Could you identify your initials which appear on the bottom of that exhibit?

A. Yes, I identify them.

Q. We were discussing earlier this morning this exchange of information on tenders. Is this an example of the type of information which would be exchanged between the manufacturers of special tenders?

A. Yes, it is.

Q. And in this particular case, I take it that Phillips Electric was advising the other manufacturers as indicated by the initials on the lower left hand corner of your quotation?

A. Yes.

Q. Could you just indicate on this document what firms these initials represent?

A. The Canada Wire & Cable, Northern Electric Company, Canadian General Electric Company, Boston Insulated, Federal Wire & Cable.

(Evidence, p. 631)

K. P. Macpherson, of Northern Electric, said:

Q. I wanted to know whether this exchange of information on tenders relating to particular products was the result of an understanding among the manufacturers they would exchange this type of information. In answer to Mr. Hunter I understood you to say Mr. Fitzgerald would send this type of information to you if he felt Northern Electric would be interested?

A. Yes, that is correct.

Q. Was there an understanding that he would send it?

A. There was an understanding he would keep us informed.

. . .

Q. In the case of the Northern Electric was it your practice to work up your own tender yourselves, or did you always wait to receive advice from some of your competitors?

A. We would work up a price from cost. We would start with the cost on every item that we quoted on that was not a standard priced item. That is one that was on our price book. Any special article that came along we would not quote without knowing where we stood on that particular item.

BY THE SPECIAL COMMISSIONER:

Q. But before quoting would you advise the other manufacturers you proposed to quote that price?

A. Yes.

Q. You would advise them in advance; that is, before you quoted your price, you would do what Mr. Fitzgerald did?

A. That is correct.

Q. He does not say in this exhibit, "We have quoted a price". He says, "We propose to quote"; and that is what Northern Electric would do?

A. That is correct, yes.

(Evidence, pp. 90-93)

The policy of submitting uniform tenders by agreement among the companies has been maintained in the post-war years. A memorandum of November 27th, 1946, from J. H. Fitzgerald, of Phillips Electrical Works, advised Messrs. Gass and Macpherson that "We propose to quote as follows" on a tender to the City of Winnipeg Hydro Electric System. (Exhibit 352). On October 21st, 1947, T. A. Gass, of Canada Wire and Cable, in a letter to the General Manager of that company, wrote, in part, as follows with respect to another tender to the Winnipeg Hydro Electric System:

> On the tender to be submitted to the above for 28,000 ft. of 69 Kv. Cable, tenders for which close October 27th, I have discussed this matter with the C. G. E. and for your information and as a matter of record, I wish to advise they are quoting as follows:
>
> . . .

(Exhibit 351)

In his testimony, Mr. Gass said:

Q. I show you a document coded CWC19-4, Serial 2600, dated October 21, 1947. Could you indicate what manufacturers

would be interested in tendering on the type of product referred to here as 69KV cable?

A. I know that we were interested and I know the Canadian General Electric was interested.

Q. Is that the reason you discussed this with C. G. E.?

A. At that time the Canadian General Electric had never supplied or manufactured any cable of this type and to the best of my knowledge they were not seriously interested in this but they wanted to put in a price because Winnipeg Hydro wanted competition.

Q. Was the interchange of information with regard to these quotations usually carried on by phone calls or by memoranda?

A. Both; in this case I have a very clear recollection of it and it was a telephone call or a discussion over a luncheon table.

. . .

THE COMMISSIONER: Q. When you heard that the Winnipeg City Hydro wanted competition, what did you understand by that?

A. I was informed by the Manager of our Winnipeg office, according to my recollection, that the Winnipeg Hydro which was a municipal body hated to place an order for this large amount of cable with the Canada Wire & Cable Company which was the only one who had previously supplied that high voltage cable, without having a competitive price from some other concerns. That is my recollection of the matter but, as you see, it was a few years back.

Q. When you say a competitive price, do you mean a different price from your bid?

A. For the record, the City Council liked to see two or three prices.

(Evidence, pp. 1676-1678)

In a memorandum dated October 29th, 1948, circulated to Canada Wire and Cable, Northern Electric and Canadian General Electric, J. H. Fitzgerald, of Phillips Electrical Works, complained of a difference in quotations which had resulted in a contract being awarded to a competitor who had presumably failed to observe the understanding with respect to freight charges:

On September 21st we quoted, through our agent, for the above on a quantity of 78,000 ft. each of #1 and #2/0 hard drawn bare copper cable, at the regular prices including map rate freight to Sudbury.

We have been recently advised that this business was placed on the basis of the f. o. b. Toronto prices with freight either pre-paid and charged or collect.

Taking into consideration the gross weight of material shipped on reels, the saving to the customer would be not more than ten to fifteen dollars on a total value of around $18,000.00, nevertheless it was apparently sufficient to obtain the order.

If this is the way we are going to quote on these inquiries, we would certainly like to know about it, but we can see no value in Mac's suggestion on advancing the shipping weights to calculate map rate freights for material shipped on reels, if we are going to quote on this basis.

We do not know who received the order but presume it was one of the parties to whom this memo is addressed and we would appreciate receiving your comments.

(Exhibit 230)

In evidence Mr. Fitzgerald said:

Q. This, apparently, was a difficulty in the interpretation of the price sheet?

A. That is right.

Q. And the difficulty here, I take it, was in connection with charging freight?

A. That is right.

Q. And this is the type of information that was exchanged between manufacturers with regard to discrepancies in price?

A. That is right.

Q. Or in tenders?

A. That is right.

THE COMMISSIONER: Q. Did you say to Mr. Hunter that you thought it was a discrepancy or error, or do you think it was deliberate under-cutting?

A. That is rather difficult to answer, Mr. Commissioner. They said it was definitely an error in pricing, but whether or not it was deliberate I would hesitate to say.

Q. Did this happen very frequently?

A. It happens often enough.

(Evidence, pp. 689-690)

A series of memoranda dated in March, April, May and June of 1949, circulated by Canada Wire and Cable, were identified as a typical exchange of information on tenders. (Exhibit 152, Evidence, p. 588).

On June 7th, 1950, J. H. Fitzgerald, of Phillips Electrical Works, circulated a memorandum of suggested prices on tenders requested by the Canadian Commercial Corporation, saying in part:

> These suggestions are merely forwarded for further discussions and we would appreciate receiving your comments in due course.
>
> (Exhibit 339, p. 1)

On June 9th, 1950, T. A. Gass, of Canada Wire and Cable, replied to Mr. Fitzgerald's memorandum. (Exhibit 339, p. 2). On June 21st, L. G. Lumbers, of Canada Wire and Cable, wrote further to Mr. Gass' memorandum, commenting on prices submitted by "B" (F. W. Barnhouse of Canadian General Electric). Mr. Lumbers said, in part:

> It will be noted that in three or four cases his prices are higher than those originally quoted but in our opinion we believe we should strive to quote prices that would represent a reduction in all cases over those originally offered in view of the reported U.S. prices. We believe this is the C.C.C's main concern and if they can show that the Ottawa meeting resulted in reduced prices across the board, we believe they would be satisfied regardless of whether or not all prices were the same. We ourselves would be inclined to quote the same prices throughout.
>
> (Exhibit 339, p. 3)

On June 22nd, 1950, Mr. Fitzgerald circulated the following memorandum in reply to Mr. Lumbers:

> Referring to L's memo of June 21st, we do not agree with L's assumption that the Canadian Commercial Corporation's main concern was that the Canadian prices were higher than U.S. prices.
>
> Our interpretation of the discussion was that they were mainly concerned that all the Canadian prices were the same, and from this they drew the conclusion and would continue to draw the same conclusion if prices were the same, that the Canadians were quoting the price of the highest cost manufacturer.
>
> While we do not agree, these are the facts, nevertheless, it is our feeling that we should not quote on the same level.
>
> (Exhibit 339, p. 4)

In evidence Mr. Lumbers said:

Q. Do you recall whether there had been an objection by the Canada Commercial Corporation to wire and cable manufacturers quoting the same price on tenders, or can you recall the instance?

A. The instance was reported to me by Mr. Pryce that that was the case.

Q. Do you recall whether any change was made subsequently in tenders for the Canadian Commercial Corporation?

A. Our present policy is to quote our own prices without recourse or without talking to any of our competitors.

THE COMMISSIONER: Q. That is with respect to the Canadian Commercial Corporation?

A. Yes.

Q. When did you adopt this new policy?

A. Mr. Pryce can tell you exactly but it seemed to me that we were all making different things, and I would say certainly within the last year. That is just my suggestion. We have been doing it for some time. It might have been a year and a half.

MR. HUNTER: Q. Do you know whether the other manufacturers have been doing the same thing?

A. I can't answer that. I know we are not talking to them on this type of tender.

(Evidence, p. 1781)

Mr. Pryce confirmed Mr. Lumbers' testimony that the manufacturers no longer exchange information on tenders to the Canadian Commercial Corporation for the type of cable in question. (Evidence, p. 1833). T. J. Bell, of Federal Wire and Cable, also confirmed this evidence but explained that -

. . . The Canadian Commercial Corporation no longer buys this type of material. I would say that we do not exchange any information on tenders to the Department of Defence Production.

(Evidence, p. 1950)

Mr. Bell further explained the reason for the change in policy as follows:

. . . We would circulate to the other manufacturers the price that we had quoted on this cable, and were they to quote on it we originally decided that they would adopt that price. Well, we were called back to Ottawa within three months. They were extremely upset about the fact that we had quoted similar prices. They were also upset because our prices were so high, so they just said: "We don't approve of that system. You will have to change your methods. We want competitive bids on the material, and we think your prices are much too high."

(Evidence, p. 1946)

If the manufacturers discontinued the practice of submitting identical bids on tenders to the Canadian Commercial Corporation, this was by way of exception, since they continued the practice without change in so far as their other customers were concerned even during the period of this inquiry. A number of memoranda dated April 14th andApril 15th, 1952, found in the files of Phillips Electrical Works and produced at the inquiry, were identified by a number of witnesses as recent examples of the exchange of information on tenders. (Exhibits 180, 341, 374, 386. Evidence, pp. 670, 1583-1584, 1783-1784, 1843-1844). These memoranda differ somewhat from the memoranda on tenders of an earlier date in that there are no initials on them either by way of signature or to designate the recipients and no indication of their source. They show a date, the name of the customer who had called for tenders, the product, and a price. They were apparently identified only by the postmark on the envelope in which they were enclosed.

Exhibit 151 was identified by M. R. Macdonald, of Northern Electric, as the working papers used by his staff in preparing information on tenders to be sent to the other manufacturers. In evidence, Mr. Macdonald said:

Q. . . . Would you look at these documents and say whether you can identify the handwriting that appears on them or whether you have ever seen the documents before? I understand they were documents that were removed from the files of the Northern Electric Company.

A. I would say they are Mr. McLaren's writing.

Q. He is in your Department?

A. Right. I am not a handwriting expert, though.

Q. Have you ever seen the documents before or do they mean anything to you?

A. They mean a lot to me. I recognize them for what they are.

Q. It is the usual type of document that is prepared by your staff in connection with certain types of work?

A. Yes.

. . .

MR. HUNTER: Q. Mr. Macdonald, could you explain what is meant by this handwriting that appears on the first document, 3NE27-1-1, where it states: "Sheet to F".

A. That means that we sent in the mail to Phillips Electrical Works the price for that cable.

Q. Would this be a price which had been computed for a tender which had been received or at least a tender which had been referred for quotation?

A. Yes.

Q. And this, I take it then would be the working papers from which the figure would be prepared and the information sent to your competitors?

A. Yes.

Q. And if there were more than one competitor interested, then would there be writings on sheets to whichever was concerned?

A. Yes.

Q. There would be more than one initial, I take it?

A. Yes.

Q. Who in your Department actually types out and sends the sheet to "F." in a case such as this document has referred to?

A. One of our stenographers.

Q. It is just mailed to Phillips Electric in that case, or is it addressed to Mr. Fitzgerald, or do you know the mechanics?

A. I would say that it was sent to Mr. Fitzgerald. The mechanics are routine when they are established.

(Evidence, pp. 584-586)

When shown memoranda of this type filed as Exhibit 386, J. H. Pryce, of Canada Wire and Cable, said:

Q. Are these illustrative of the type of memoranda with regard to quotations on special tenders which have been circulated in the industry up until recently?

A. They are typical, yes.

Q. Is this information still being circulated in the industry to your knowledge?

A. Yes.

Q. Are you able to say from looking at these particular documents where they originated?

A. These appear to have originated with us, these two.

(Evidence, p. 1844)

The mechanics of exchanging information on tenders with a view to arriving at an identical bid was described by Mr. Macdonald, of Northern, as follows:

Q. Is the first step that you work out the information from whatever material or price information you have in the Northern Electric; that is the first step?

A. Yes.

Q. And then is the second step that you advise your competitors of the figure that you have worked out?

A. Yes, that would be the next step.

Q. And is that a type of communication which would indicate what you proposed to quote?

A. Yes, shall we say "suggest" what we would quote.

Q. Whom are you suggesting when you send that; are you suggesting that that is the price they also should quote?

A. No, I am suggesting that is the price I would like to quote.

Q. What is to prevent you from quoting that price?

A. Quite often it is too high.

Q. By whom?

A. The party or parties that were discussing it.

Q. That would be your competitors?

A. Yes.

Q. If they tell you this is too high, is that sufficient cause for you to change your quotation?

A. Yes.

Q. Is that because if they feel it is too high they are obviously intending to quote lower?

A. Not necessarily.

Q. Have they ever said it was too low?

A. On some occasions, yes.

Q. Have you changed your quotation when they said it was too low?

A. Not too often.

Q. But more frequently if they say it is too high, you come down?

A. Right.

Q. In the meantime do you receive a notification from them as to what they propose to quote?

A. Yes.

Q. And if you think their quotation is too high do you tell them?

A. Yes.

Q. If you think it is too low, you tell them?

A. Yes.

Q. And do they change their price if you think it is too high?

A. Well, I can't answer that. Sometimes yes and sometimes no.

Q. Is the result of these discussions or this interchange of information a fact that you and your competitors would end up by quoting the same price?

A. Yes.

Q. Is that the object or purpose of this interchange of information?

A. Yes.

Q. And do you think this system works out relatively successful?

A. Yes.

(Evidence, pp. 568-570)

While the evidence clearly establishes that it has been the practice of the industry for many years by agreement or arrangement to submit uniform tenders, the evidence does not show that the manufacturers have pursued a policy of allocating tenders among themselves. Questioned on this point, Mr. Macdonald said:

Q. Is there or has there been any arrangement since you submitted the same bids as the other manufacturers to allocate particular tenders? In other words, if you bid the same price Northern Electric would receive the tender in January and somebody else in October? Do you understand what I mean?

A. No.

Q. Has there been any arrangement amongst the manufacturers in which they in effect allocate to each other the tenders?

A. Definitely not; positively not. No, it is highly cut-throat competition.

Q. Except on a matter of price?

A. Except on a matter of price, I agree with you. At the time we make our quotations we have no reason to know that we are going to get business other than our sales offices bring as much pressure as they can. We try a bit of entertaining now and then. A great deal of business is sold because our salesman knows his customer.

Q. That applies to other manufacturers as well?

A. Yes.

(Evidence, pp. 571-572)

IV. AGREEMENTS OR ARRANGEMENTS ON TERMS AND CONDITIONS OF SALE

The agreements or arrangements designed to eliminate price competition among the wire and cable manufacturers were supplemented by agreements or arrangements on terms and conditions of sale, including classification of customers, trade and cash discounts, and freight charges. Uniform terms and conditions of sale were a necessary consequence of the basic policy of price uniformity.

1. Classification of Customers

The evidence shows that the companies have over a period of years established various categories or classes of customers based mainly on the nature and volume of their business and the products sold to them. Following discussions at meetings or by memoranda, lists of customers in certain classes have from time to time been prepared and circulated in order that the same lists should be used by all the companies. Additions to and deletions from the lists have been made after discussion.

Differential rates of discount from the list prices of certain products have been discussed and agreed upon in respect of each class of special customer. These discounts were uniform for each customer within a class but varied from class to class, as did the products on which discounts were allowed. Agreement on uniform lists of customers and on the applicable rates of discount formed part of the over-all plan under which each company would sell at the same price to the same customer.

The following are some of the classes of customers for which uniform lists have been established, as shown by written returns submitted by the leading manufacturers: electrical wholesalers or jobbers, radio jobbers, large contractors, manufacturers, and "special customers". It appears that each company has generally recognized the same customers within each class and that customers would be added to or deleted from lists at or about the same time, although at times companies have secretly allowed special discounts to customers who were not on the "recognized list".

The evidence also shows discussions from time to time with a view to agreement on the appointment of agents and the location of agency points.

The practice and policy with respect to the classification of customers have existed for many years. For example, on January 31st, 1933, K. P. Macpherson, of Northern Electric, in a memorandum to representatives of five other manufacturers, wrote:

Departmental Stores

We believe the name of Dupuis Freres, Montreal, should be added to those entitled to jobbers' prices on Flexible Cords only. If this is satisfactory we will reissue sheet.

(Exhibit 5)

On May 15th, 1933, in another memorandum to the same manufacturers, Mr. Macpherson set out a number of facts about a firm established to operate a wholesale business and which had applied for jobbers' prices, and concluded:

> I do not see that we can do other than accord them jobbers' prices. What is your desire.
>
> (Exhibit 7, p. 11)

In a memorandum of April 2nd, 1934, to the same manufacturers, Mr. Macpherson suggested with respect to Crane Limited that:

> . . . if agreeable to you, they be placed on the Jobbers' List at all points at which they operate wholesale supply houses.
>
> (Exhibit 8, p. 5)

On February 21st, 1935, Mr. Macpherson sent out the following memorandum:

> We do not believe that the Canadian Tire Corporation are entitled to jobbers' prices on any of our products, with the possible exception of Automobile Wires and Cables.
>
> (Exhibit 10, p. 10)

T. A. Gass, of Canada Wire and Cable, replied on February 22nd, 1935, as follows:

> The above are a straight price-cutting outfit, and we, like Mac, do not believe they are entitled to Jobbers' Prices on any of our products, with the possible exception of Automobile Wires and Cables, and even that I would be inclined to doubt.
>
> I believe this has been stirred up by one of Mac's local salesmen here in Toronto, as our salesman was told that the N. E. Co. had undertaken to have them put on the Jobbers' List for all kinds of wire.
>
> (Exhibit 349)

In evidence Mr. Gass said:

Q. I think earlier this morning you mentioned that whether a jobber was a price cutter was not one of the factors which entered into the recognition of that jobber?

A. That is correct.

Q. Could you explain the reference here then?

A. I can. This is a corporation handling automobile accessories, a firm doing business in various places throughout the country. They have no connection with the electrical trade as such contractors. They were not, in my opinion, a suitable outlet for the sale of electrical wire and cable. They were the lowest price people in the automobile accessory business at that time. Our policy was to try to give a profit of a fair margin for the outlet of an electrical supply house. Does that answer your question?

Q. Would the fact that your policy was to provide a fair margin of profit for the regular electrical wholesalers mean that where a particular jobber was a price cutter that would affect your policy?

A. Not if he was a recognized jobber. If he was a regular recognized jobber, the jobbers can fight that out between themselves but we should not put people like tire companies into business to compete with them.

Q. You explain this memorandum that this Canadian Tire Corporation was not the type of outlet that should be recognized but not because it was a price cutter but rather because it was not an electrical wholesaler?

A. He was also a price cutter in his own line.

Q. That fact influenced your company, did it?

A. It influenced me that he was not a suitable man for an electrical wholesaler and not from the price cutting angle.

(Evidence, pp. 1670-1671)

On February 8th, 1935, E. T. Lough, of Northern Electric, Winnipeg, sent to K. P. Macpherson a copy of the minutes of a meeting held in Winnipeg and attended by representatives of Canadian General Electric, Phillips Electrical Works, Northern Electric and Canada Wire and Cable, "to discuss the new set-up on R. C. Wire and Cable agent-jobbers arrangement". The report said, in part:

. . .

It was therefore agreed that we would try out a scheme of ll putting new changes in policy or prices into effect simultaneously and that could best be done by some one of us acting as a clearing house or pivot for the issuing of such information. W. G. Vogan will act in such capacity for the time being, or in Mr. Vogan's absence - Mr. E. T. Lough.

In reference to the new jobber-agent discount - it was agreed that we must stick to the arrangement 100% and we will watch carefully the operation of this Jobber Agency policy; . . .

(Exhibit 72, p. 2)

The following memorandum dated July 22nd, 1935, from P. F. Sise, then president of Northern Electric, to officials of the company, including Mr. Macpherson, is further evidence of discussions with respect to agreements on the appointment of jobbers and agents:

Referring to our discussion of this morning, regarding the proposals emanating from the recent meeting in Toronto with respect to an agreement regarding the sales of rubber covered wire and cords, which, as I understand it, propose a somewhat drastic reduction in the discount allowed to jobbers and also propose an extension of the appointment of agents and the appointment of distributors.

As I see it the suggestion to appoint distributors would not be acceptable to the majority of manufacturers and would only complicate the situation not improving it in any way.

It seems to me that the principal concern of all of us is to work out some arrangement which will result in a reasonable stabilization of prices and I think we must recognize that this cannot be done so long as any manufacturer considers he is handicapped by reason of the sales organization or setup his competitors are able to create but which he, by reason of his limited range of products, cannot create. If we admit this, it would appear as if the only solution is to try to work out an arrangement which, as far as possible, recognizes the limitations of certain manufacturers and provides channels through which their products can be marketed on some sort of an equitable basis. My suggestion would be as follows.

1. Each manufacturer should be free to appoint agents.

1.1 All agents should be appointed under a definite agency agreement which clearly defines the territory for which the agency appointment is made.

1.1.1 It should be agreed between the manufacturers concerned that the appointment of an agent carries with it the undertaking on the part of the principal to pay the agent a commission on all business secured by the principal from the territory allocated to the agent whether it is secured through the agent or direct.

1.2 The manufacturers concerned should be advised immediately of the appointment of all agents and the territories to which they are allocated but the amount of the remuneration in the form of commission or otherwise which might be paid by the principal to the agent need not be disclosed to the other manufacturers.

1.3 Manufacturers should be free to place consigned stocks with their agents should they so desire.

1.4 An agent may be appointed by a manufacturer for a restricted or unlimited line of the manufacturer's product and the advice of the appointment to other manufacturers should clearly specify what products the agency agreement covers and the other manufacturers should undertake not to solicit business from the agent for these products.

1.5 A manufacturer appointing an agent must accept full responsibility for his agent's actions, particularly with respect to prices, terms, etc., insofar as the agency products are concerned.

1.6 Should a manufacturer appoint an agent for all his wire and cable products, some arrangement should be worked out which would permit the agent to order wire and cable products which his principal does not manufacture from another manufacturer who would bill the sale through the agent's principal. (This is suggested in order to give the principal proper control over the agent.)

1.7 Recognized jobbers who are appointed as the agent of any manufacturer should be removed immediately from the jobbers' list insofar as the agency products are concerned.

My thoughts with regard to such an arrangement are based on the fact that we would not permit any interference or criticism from our competitors in any decision we might make to open a branch or sub-warehouse or to appoint salesmen to certain territories. Consequently, if we recognized the limitation of some of our competitors with respect to their range of products and their limitations with respect to opening offices and warehouses of their own, I do not think we could question their right to appoint agents so long as they are appointed on a basis somewhat comparable to our own arrangements with respect to territorial limitations and carry a legitimate charge for the cost of representation.

It seems to me if such an arrangement can be worked out, it will have a decided tendency to stabilize the business in each territory as the agency appointment would be sufficiently valuable to the agent to give the manufacturer adequate control over the agent's actions.

I fully realize that such an arrangement might not be acceptable to all the manufacturers but I am convinced it would be a fair one to all concerned and the practical result of it would go a long way toward solving the situation which presently exists with respect to jobbers. Will you please give some consideration to the suggestion and then if it seems reasonable we might discuss it with the Canadian General Electric before suggesting it to the other manufacturers.

(Exhibit 23)

Examined on this memorandum, Mr. Macpherson said:

Q. . . . Mr. Macpherson, do you recall attending the meeting to which Mr. Sise refers in the first paragraph of this memorandum?

A. I do not recall the actual meeting, but I would be there.

Q. Would this be a meeting of the members of the various manufacturers, under the circulating system?

A. It would be an industry meeting.

Q. Would the various persons whose names appear or have appeared from time to time on the circulating memoranda be there?

A. Not a lot of them by any manner of means. A number of those I mentioned were not in the picture at that time.

Q. But those people who were on the circulating memoranda system in 1935 would be in all likelihood present at this meeting in 1935?

A. Yes, they would.

Q. And those meetings covered and dealt with such things as are referred to in the first paragraph, that is the jobbers' discounts?

A. Well, the meeting had to do with general policy change.

Q. And it was a policy change which all the manufacturers discussed?

A. That is correct. Some were dissatisfied with what was going on and it was a question of reorganizing the business and this was the memo here as a very equitable way of handling it for everyone concerned.

(Evidence, pp. 74-75)

. . .

Q. Do you know whether this particular policy was discussed by Northern Electric with Canadian General Electric; did you take part in any of the discussions?

A. I do not recall having done so.

Q. Can you say whether Mr. Sise's recommendations were subsequently implemented by the industry?

A. As far as it became practicable to do so, I believe they were.

(Evidence, p. 78)

That an "approved jobbers' list" was in existence in 1937 is shown by a memorandum from Mr. Macpherson, dated December 1st, 1937, and circulated to the interested manufacturers. The memorandum (Exhibit 15, p. 1) deals with non-metallic sheathed cables and attached to it are sheets containing "net jobbers' prices" on such cables. A note on one of the attached sheets reads as follows:

1. Jobbers on the Approved Jobbers' List may be sold at the Net Jobbers' Prices, shown on Page #99 F. O. B. their Ware Houses in Distributing Points shown above.

(Exhibit 15, p. 2)

Acknowledging a memorandum from J. G. Smith, of Federal Wire and Cable, with respect to the appointment of a certain firm in Winnipeg as agent, C. S. Leary, of Canadian General Electric, circulated the following memorandum, dated December 6th, 1937, to Messrs. Gass, Macpherson, Timmons, Arnold and Smith:

Acknowledging memo dated November 24th, this is another instance where we felt it would be desirable to discuss the matter. However, while this company in the past have purchased considerable of their requirements from us, we have no objection to their being granted an agency proposition by S.

As in the past, we assume that if this appointment is negotiated, arrangements will be made whereby they will be obligated to maintain the established resale.

(Exhibit 322, p. 1)

In evidence Mr. Leary said:

Q. I see. Now, if this is an application for an agency - who is "S"? We had better start with that question.

A. I would assume it was referring to Mr. Smith, Federal Wire.

Q. Federal Wire & Cable. If this company was appointed an agent of Federal Wire & Cable, would it handle the products of any other manufacturer in competition with the products of Federal?

A. I doubt if they would.

Q. Then what is the interest of the other manufacturers in the resale price at which Mr. Smith's agent will sell his product?

A. I suppose the answer to that is a selfish one from our standpoint.

Q. That is, that if he sold Mr. Smith's products below your established resale price, which you said would mean your published price list -

A. That is correct.

Q. That he would then take the business away from your agents or branches? Is that correct?

A. From the branches. We would only have to meet it.

Q. Then does this indicate that there was an arrangement in 1937 and before 1937 whereby when an agent was appointed that he was obligated to maintain resale prices in order not to compete with the other manufacturers?

A. I made a statement we had no agencies. (This is going back a bit.) At one time we did have an occasional agent. We, in appointing him agent, asked him to adhere to the resale. Now, what the other companies did I cannot answer for them.

Q. Well, what do you mean, Mr. Leary by the second paragraph of this memorandum, that is:

> "Arrangements will be made whereby they will be obligated to maintain the established resale."

A. I assume that if Mr. Smith made an agreement with this party to sell his products on an exclusive basis, he could enter into a contract with him and ask him to maintain prices.

Q. Is that what you did in the case where you did appoint an agent?

A. We asked him to maintain prices.

Q. Did you enter into a contract with him?

A. No, we never had a contract form, sir.

Q. Does your statement in the second paragraph of this letter indicate a practice which was prevalent in the industry or among the manufacturers at that time where they were appointing an agent?

A. It appears as though it were.

(Evidence, pp. 1479-1480)

On February 5th, 1938, T. A. Gass, of Canada Wire and Cable, circulated the following memorandum to the other manufacturers with respect to Consolidated Dealers Limited, Toronto:

> You may recall this account was discussed on several occasions as to whether or not they should be granted Jobber's status, and the decision has always been that they should not be recognized as jobbers and only be allowed to buy at Net List.
>
> We have been in touch with them on different occasions and only recently they have assured us that they are getting jobbers' prices and state that they would be willing to purchase from us if we will give them the same price that they procure elsewhere.
>
> I would appreciate an expression from you as to whether or not you have sold this account and if so, on what price level?
>
> If they are not buying from any manufacturer at jobbers' prices, it is, of course, possible they may be buying from an agent, who may be giving them jobbers' price and only taking his agent's commission. In my opinion, this angle should be thoroughly checked.

(Exhibit 347, p. 1)

On March 2nd, 1938, Mr. Gass, in a memorandum referring to an application from H. R. Carson Limited, Lethbridge, Alberta, to be placed on the jobbers' list said, in part:

> In the opinion of our Calgary manager, if Carson is put on, there is no question but what Hoyt Hardware Limited of Lethbridge should also be put on the list, and this, in my opinion, is the danger of recognizing jobbers at points where there has not previously been a jobbing house, in that, if you recognize one, you must recognize others who are comparable in the same place.

(Exhibit 347, p. 2)

With reference to the same matter, C. S. Leary, of Canadian General Electric, wrote on March 3rd, 1938:

> . . . that this company has been buying wiring materials at jobbers' prices and has, in turn, been selling direct at prices slightly under the schedule.

Mr. Leary concluded that:

> Frankly, we feel that this matter should be discussed before a decision is arrived at.

(Exhibit 322, p. 2)

Referring to the same matter, K. P. Macpherson of Northern Electric, in a memorandum dated March 4th, 1938, said, in part:

> We recommend that the above noted company be not given a jobber status.
>
> We understand that they have applied and have been rejected as jobbers on supply lines.
>
> (Exhibit 74)

Examined on this memorandum, Mr. Macpherson said:

Q. Would you state to whom this memorandum was sent or the recipients?

A. The memorandum was sent to Leary, to Timmons, to Gass, to Smith and to Arnold.

Q. The reference in the memorandum is to H. R. Carson Limited, Lethbridge, the second paragraph states:

> "We recommend that the above named company be not given jobber status."

A. For the simple reason he was not in the electric business. He was an automotive chap. What he was really trying to get there was ordinary things. He had no intention of acting as an electric jobber.

Q. My question was, in the period 1938 to 1939 was it not a fact there was a lot of information exchanged between manufacturers as to who should be or who should not be appointed jobbers?

A. Yes.

Q. This is an example of one of those things?

A. Yes, and a very good reason why this man should not be appointed a jobber.

Q. In your opinion?

A. In my opinion.

(Evidence, p. 201)

On April 14th, 1938, P. A. Timmons, of Automatic, circulated a memorandum to Messrs. Gass, Macpherson, Leary, Arnold and Smith with reference to Canadian Electrical Supply Co., Montreal, as follows:

The above have made application to be placed on the Jobbers List and we would suggest that all concerned arrange to discuss this question at the next meeting.

(Exhibit 76)

On July 14th, 1938, J. G. Smith, of Federal Wire and Cable, advised the other companies that:

Independent Electric Limited have opened an office in the City of Ottawa and we are desirous of appointing this firm our agents in this territory, and will do so if there are no objections offered.

(Exhibit 390, p. 1)

Mr. Macpherson of Northern Electric apparently replied to this memorandum, and on July 18th, 1938, Mr. Smith wrote again, as follows:

In reply to M's Memo of the 15th instant re Indeperdent Electric Company, he apparently has been misinformed regarding this matter.

This firm wired us on July 11th and we had no communication with them prior to this date. On July 12th, I telephoned two interested parties and discussed the matter, and up to the present time we have not even completed our arrangements with this firm and are waiting to hear from other interested parties. We communicated with the Independent Electric on July 12th, advising them we would consider the matter.

If anyone has any objection to this appointment, I wish they would immediately put forward their objection.

(Exhibit 390, p. 2)

Further to this matter, C. S. Leary, of Canadian General Electric, advised on July 18th, 1938, that:

So far as we are concerned, we have no objection to their being appointed as agents for S, provided that this arrangement is confined to the city of Ottawa, and not extended to Toronto.

(Exhibit 322, p. 5)

On July 21st, 1938, Mr. Smith closed the matter by circulating the following memorandum:

Independent Electric Limited

As we have not received any objections to the appointment of the above firm as our agents to represent us in Ottawa, we are making this appointment.

This, I can assure you, will in no way affect their Toronto branch.

(Exhibit 390, p. 3)

Messrs. C. S. Leary, of Canadian General Electric, and T. J. Bell, of Federal Wire and Cable, identified the foregoing memoranda as representative of memoranda exchanged between the wire and cable manufacturers over a period of time. (Evidence, pp. 1475-1476, 1884).

A memorandum indicating an agreement or understanding among the manufacturers in 1938 that they would attempt to control the prices at which jobbing outlets sold wire and cable products was sent to the other manufacturers by T. A. Gass, of Canada Wire and Cable, on October 27th, 1938. (Exhibit 113).

On February 18th, 1939, Mr. Gass circulated a memorandum with respect to the appointment of Leff Electric Co., London, Ont., as an agent, with the assurance that -

> We would, of course, be responsible for their maintaining prices on wire products. . . .
>
> (Exhibit 347, p. 5)

On February 22nd, 1939, Mr. Gass advised of the termination of negotiations with this firm, saying, in part:

> Mr. Leff apparently is inclined to be a price cutter, as are many others in similar circumstances, and would not be interested in an Agency proposition unless he had a free hand to meet competition. On this account, of course, we are proceeding no further with him.
>
> Doubtless he will approach others along the same lines and I would suggest that everybody insist in dealing with him, that they would not consider any proposition without price control.
>
> (Exhibit 347, p. 6)

On February 24th, 1939, P. A. Timmons, of Automatic, sent the following memorandum to the interested manufacturers with reference to Ahearn and Soper Limited, Ottawa:

> Referring to recent telephone conversation regarding the above, we understand that the majority are in favour of placing the above mentioned concern on the Jobbers List and we are acting accordingly.
>
> (Exhibit 79)

On March 7th, 1939, C. S. Leary, of Canadian General Electric, recommended that Milne Electric Company, North Battleford, Sask., be classified as electrical jobbers. (Exhibit 322, p. 7).

In a further memorandum of March 10th, 1939, Mr. Leary said:

> In reply to S's memo of the 9th, my idea in sending out my memo of March 7th was to enable everyone to come prepared to discuss this at the next meeting.
>
> It is my understanding that all agency and jobber appointments before being made are required to be brought up for discussion at a meeting.
>
> (Exhibit 322, p. 8)

On May 17th, 1939, T. A. Gass, of Canada Wire and Cable, circulated a memorandum with reference to Industrial Wire and Cable, which said, in part:

> I had an interview with our so-called customer whom we discussed last week and advised him that one of the manufacturers had definite proof that he had cut a price to a jobber, which Mr. "W" stated was not his policy nor had he any intention of allowing prices to be cut.
>
> I stated this was a very definite case of which we had proof and he advised that it must be out West where he promptly admitted his agent, a man by the name of Adams in Vancouver who apparently handles their products, and also Solex Lamps, had supplied a jobber at an extra discount of 7 1/2%. He promptly produced a copy of a letter he had written to Mr. Adams stating that they would not accept any further business except at the authorized discount.
>
> Mr. "W" stated that his policy would be to absolutely maintain the prices and I really believe that he is in earnest, so much so, that I discussed with him the advisability of him trying to make Community and other jobbers who bought from him maintain the resale. He stated that he had already had this matter up with them and that they had practically told him it was none of his business what they did with the material they purchased from him as long as they paid for it, but he seemed to indicate that there was some hope of the jobber situation straightening out as far as Superior and Community were concerned.
>
> (Exhibit 348, p. 9;
> Evidence, p. 1667)

On July 28th, 1939, the following memorandum was circulated by Mr. Macpherson, of Northern Electric, to the interested manufacturers:

> Attached you will find a tabulation of the Electrical Jobbers in Canada who now appear on various Jobbing Lists.

Will you please study this list with a view to eliminating as many jobbers as possible who do not appear in each of the four lists.

(Exhibit 15, p. 15;
Exhibit 73)

Examined with respect to some handwritten notes on this document, Mr. Macpherson said:

Q. There are some handwritten notes at the bottom left-hand corner of Exhibit 73. It says: "K. P. M. took part of this to meeting August 29, 1939".

A. That is what it says.

Q. What meeting would that be?

A. I would say it was an industry meeting.

Q. And this subject of jobbers would be discussed at that meeting?

A. Yes.

Q. And would agreement be made between the representatives as to who was going to appear on what list, what firms or what would be discussed at the meeting?

A. Our object was to keep our branch houses informed of set-ups. We had lists which were obsolete and we wanted to keep our branch houses informed as to who our competitors were in the jobbing field. As I told you before, speaking for our company, we never have agreed to a lot of people on those jobbing lists and do not sell them.

Q. Was the object of the industry to eliminate as many jobbers as possible from the jobbing lists?

A. We knew there was dead-wood on the list. We did not contact them all.

Q. In the case of Northern Electric you would know who your own dead-wood were?

A. Yes.

Q. But it was necessary to have a meeting to find out the dead-wood in the other manufacturers; is that correct?

A. Yes.

BY THE SPECIAL COMMISSIONER:

Q. Dead-wood to one might not be dead-wood to another?

A. That is correct. A lot of those fellows get on there by virtue of somebody getting somebody to do some work for them sometime.

BY MR. HUNTER:

Q. Did you ever exchange memoranda between the manufacturers asking the approval of one or other manufacturer to the appointment by you of a jobber for any particular area?

A. I would say that we might have tabled a name that we had added to the jobbers' list.

Q. Is it not a fact, Mr. Macpherson, that back in 1938 and 1939, in that period, that there was considerable interchange of information between manufacturers on the appointment of jobbers through this circulating memorandum system as well as at meetings?

A. That might have been because we had a situation, a list with dead-wood in it.

Q. Is it not a fact that frequently those memoranda, some of which might originate with your company and many others which might originate with other companies would frequently ask for the approval of other manufacturers to a certain jobber or agent?

A. That was probably a polite way of doing it, but in ninety-nine cases out of a hundred the deed was done.

Q. But you will admit there were numerous memoranda circulating?

A. I would not say how numerous they were, but there were.

(Evidence, pp. 198-200)

On August 26th, 1939, Cables Conduits and Fittings advised Mr. Macpherson of the appointment of two agents in Halifax. (Exhibit 80). On August 28th, Mr. Macpherson acknowledged receipt of the memorandum and said:

. . .

This matter will be brought up on the next convenient occasion.

(Exhibit 81)

In this connection, V. N. Longtin of Cables, Conduits and Fittings, said:

Q. Can you explain having appointed the agent, and in view of the appointing, Mr. Macpherson of the firm replying and saying that this matter would be brought up on the next convenient occasion?

A. He would probably bring us up on the carpet for doing it.

Q. Was that the usual practice?

A. We never thought we would have to discuss a manufacturer's agent supplying to other jobbers with any of our competitors. As a matter of courtesy we would tell them about it.

Q. Would it be correct to say some of your competitors would have discussed it? Is that what you meant by "up on the carpet"?

A. Yes.

Q. What was it then in 1939?

A. I don't remember what the deal was at all.

BY THE COMMISSIONER:

Q. Would you discuss the appointment of a manufacturer's agent with your competitors to-day?

A. No, not a manufacturer's agent. A jobbers' agent we would.

Q. Why would you discuss a jobbers' agent?

A. He is a kind of a wholesaler with an extra discount. By the fact that we would be giving him that discount, we would not be jumping in, giving a chiselling price, cutting prices, that way. We would give him a legitimate agent's commission to represent us.

Q. Is it correct that you tell me: advising the other manufacturers so that if they find out the discount that the jobbers' agents are getting they will think you are not chiselling?

A. Yes, that is correct. We are not cutting prices. That is the only reason we are advising them of it.

(Evidence, pp. 938-940)

On October 2nd, 1939, C. S. Leary, of Canadian General Electric, circulated a memorandum advising the manufacturers of an

application from White's Hardware Limited for jobber prices on electrical wire. The memorandum said, in part:

> We feel that their request is perfectly justified and as you will recall I discussed this with you earlier in the year.
>
> Upon receipt of your replies, we will appreciate a letter from C. F. R. J.
>
> (Exhibit 322, p. 9)

"C. F. R. J." was identified as C. F. R. Jones of Northern Electric. (Evidence, p. 1483). It appears that in this instance the extension of jobber prices to a firm was dependent upon agreement by all the interested manufacturers and that the decision was to be sent out by Northern Electric.

On November 1st, 1939, T. A. Gass, of Canada Wire and Cable, circulated the following memorandum with respect to MacMillan Electric Supply, Malartic, Que.:

> I have C. S. L.'s memo of the 31st ultimo in connection with the above and his request that the above company be put on the jobber's list.
>
> My own understanding was that we were endeavouring to cut down the jobber's list and not increase same without sanction of the other Supply Manufacturers.
>
> As far as this party is concerned we have no objection to their inclusion but believe the matter should be left over until the next Meeting for full discussion.
>
> (Exhibit 347, p. 7)

On November 2nd, 1939, J. G. Smith, of Federal Wire and Cable, replied as follows:

> With reference to the above, I might state that we are not at all familiar with this situation and would be very pleased to have the matter discussed at our next meeting.
>
> Would also suggest that, in view of the fact of our recent jobber arrangement in Quebec and the fact that I presume this firm would come under the Quebec Jobbers Association supervision, this organization should be conferred with prior to our discussion.
>
> (Exhibit 390, p. 4)

The agenda of a meeting of wire and cable manufacturers and electrical wholesalers, held on October 17th, 1940, included the following item:

4. Jobbers - (a) Uniform List
(b) Grading of Jobbers

(Exhibit 395, p. 1)

Examined on the appointment of jobbers, T. J. Bell of Federal Wire and Cable, said:

Q. At the meetings of manufacturers at which recognition of jobbers came up for consideration -- ?

A. I object to the word "consideration". I would say "discussion".

Q. Do you mean that discussion took place without consideration?

A. I would say there was discussion but there was no discussion until after those people had been allowed a jobber discount.

Q. By one or more of the manufacturers?

A. That is right, so obviously consideration is superfluous and discussion is applicable.

Q. If there was never a case came up in which somebody had not already been appointed a jobber, what was the purpose of discussing the matter at the meeting? Was it with the idea of having whatever manufacturer had appointed him put forward his appointment?

A. I will answer your question from the point of view of the Federal Wire & Cable Company. We have a small group of distributors from Halifax to Vancouver that distribute our products. Our primary interest is to keep those distributors strong. We feel that nothing can be gained by adding people to that group who do not perform their proper function in the merchandising of electrical products, so if one of our competitors puts people on that list that we felt had no place in the system of distributing and merchandising, we would object to it from this point of view, not to correct what had been done but to try to prevent that in the future.

. . .

THE COMMISSIONER: Q. Mr. Bell, in discussing the appointment of wholesalers, were you also interested in avoiding a situation where one manufacturer recognizes some one as a wholesaler and allows him the wholesaler discount, and another would not do so because they would conflict with your policy on selling?

A. No, we are primarily interested in the restriction of unqualified people to keep it in the hands of people who are capable of doing the job properly. In the distribution of wire and cable and electrical products the independent manufacturers have to contend with the competition of the national distributors who not only manufacture but distribute through their own branch offices wire and cable. Our outlets are not through branch offices but through independent jobbers and it is those independent jobbers we want to support and keep healthy. When a discount is given to people who, perhaps, sell their material from door to door and with no overhead and no method of properly distributing the products we thought that was a mistake. If we were to promote the adoption of a sort of a holus-bolus appointment of people unqualified to be jobbers we were weakening the economic position of our jobbers.

(Evidence, pp. 1919-1921)

On August 31st, 1944, C. S. Leary, of Canadian General Electric, in a memorandum to K. P. Macpherson, of Northern Electric, referred to a situation in Saint John, N. B., where the agent for Phillips Electrical Works had apparently consigned certain stock on the premises of users, and requested Mr. Macpherson to take steps to correct this since it was "not in accordance with the sales policy covering this product line". (Exhibit 83). In evidence Mr. Leary said:

Q. In the second paragraph of the quotation referring to an understanding regarding the sales policy on a certain product line. Does this sales policy refer to a sales policy of your Company or a sales policy of all manufacturers?

A. The way it is worded it would indicate that it is a policy of all manufacturers.

Q. Could you tell us to whom were you sending this memorandum?

A. Mr. Macpherson.

Q. Of the Northern Electric?

A. Correct, sir.

Q. Now, what was the reason for sending it to Mr. Macpherson?

A. I assume that he would bring it up at some meeting that would be held at some future date.

Q. Was that a usual practice in the industry to refer matters such as this to Mr. Macpherson so that it would be brought up at a meeting?

A. I don't know about the industry. It was what I did.

Q. You did it. And were the matters subsequently brought up at meetings?

A. I would assume they were, sir.

Q. Well, I mean --

A. I cannot recall directly.

Q. Any particular instance?

A. No, I cannot.

Q. But I mean, do you recall having sort of registered an objection or a complaint with Mr. Macpherson that subsequently these were considered?

A. I would say so.

Q. And is this part of the overall purpose or object of having these meetings, that is, to try and iron out any differences in price or selling policy?

A. Partially so, yes.

(Evidence, pp. 1507-1508)

The agenda of a meeting of representatives of manufacturers held on March 28th, 1946, included the following item:

1. Unfinished Business

1.1 Report on Jobber Applications

1.1.1 Electrical

1.1.2 Radio

(Exhibit 278, p. 2)

In evidence Mr. Macpherson said:

Q. And item No. 1 refers to "unfinished business; report on jobbers' applications". I take it that is the subject that we were discussing this morning. The manufacturers would discuss these applications and decide what they would do about it?

A. Yes, I tried to explain this morning the jobbers' situation and we were trying to have jobbers appointed who would be a credit to the industry. That was part of the reason. The other part of the reason was jockeying for positions.

Q. Competitively?

A. That is so.

Q. I take it the manufacturers had an interest in the jobbers' point of view you mentioned a few minutes ago when you were talking about the distributors. That is, you wanted to be sure they were jobbers because they were the ones who had to pay for the material; is that correct?

A. Yes. It is a question of credit, as I mentioned this morning. It is also a question of somebody whose normal business is peddling bananas. That is an example of a man who should not be selling electrical supplies.

(Evidence, pp. 243-244)

On October 1st, 1947, T. A. Gass, of Canada Wire and Cable, circulated the following memorandum among the interested manufacturers with reference to General Supply Company, Hamilton:

> With reference to S' memo of September 30th, we do not recollect selling this party but if we did we certainly would not allow them any discount since they do not appear on the Jobbers' list.

(Exhibit 181)

Examined on this exhibit J. H. Fitzgerald, of Phillips Electrical Works, said:

Q. What is your understanding of this memorandum?

A. Simply that Canada Wire & Cable would not sell the General Supply Company on the jobber's discount as they were not on the list.

Q. When you say they were not on the list, the phrase that is used is jobber's list, I believe?

A. Yes.

Q. Is that the same as the list you referred to this morning as the wholesaler's list?

A. That is right.

Q. At the time to which this memorandum makes reference, that is, in October, 1947, was that a jobber's list which each manufacturer had, or was it the same list for all manufacturers?

In general, I think it was the same because they were circulated.

THE COMMISSIONER: Q. Was the understanding, Mr. Fitzgerald, that you would not allow a jobber's discount to anyone other than a jobber on the list?

A. That was generally the understanding, Mr. Commissioner. I do not think it was always carried out.

Q. Was there an understanding that you would sell to no one that would not be on the jobber's list regardless of discount?

A. No, we have never refused to sell to anyone.

Q. So, being on the list allowed them the privilege of the discount?

A. Yes.

(Evidence, pp. 671-672)

Discussions and agreements with respect to the classification of customers are further illustrated by a series of memoranda in 1949 dealing with Phono Motors Limited. The following memorandum, dated January 15th, 1949, originated with Federal Wire and Cable. (Evidence, p. 680):

> This company is buying magnet wire at the regular list price and has been since they started winding coils. They are engaged in the manufacture of fans and record changers for record players.
>
> We were instrumental in starting them in this business and are, I am quite sure, their prime source of supply for magnet wire. They have not at any time pressed us for better prices than the prices they are receiving until a salesman from one of the other companies suggested to them that they might perhaps buy on a better list.
>
> Personally, I think this is a poor type of competition and certainly anyone can sell wire if they cut the price. On the other hand, this company is definitely in the manufacturing business and, I believe, should be placed on the manufacturers' list since at the present time they are much more entitled to this than the Alliance Tool and Motor Co. This company is practically defunct and I would suggest they be taken off this list.
>
> If convenient, I would suggest that Phono Motors be put on the list no sooner than February 1st and I would appreciate comments on this point.
>
> At no time has this company or any other company to which we sell magnet wire been extended prices to which they were not

entitled according to the list published in the price book. I think this practice should be followed religiously.

(Exhibit 216)

On January 17th, 1949, the following memorandum was circulated in reply, having originated apparently with Canada Wire and Cable:

With reference to "S's" memo of January 15th, we are quite agreeable to Phono Motors Limited being placed on the Manufacturers' list, providing all are in accord.

Concerning the Alliance Tool and Motor Company, we would prefer to have them left on the list until we have had an opportunity of discussing it further.

Regarding the Pye Canada Limited, we understand on the strength of our memo of December 29th "B" has already quoted them Manufacturers' prices and we would therefore suggest that they be added to the Manufacturer's list, effective immediately.

We understand it is agreed that the Ainsworth Electric Company, Toronto, be given special prices and would appreciate receiving confirmation of this before quoting.

(Exhibit 88)

Further to this matter, T. A. Lindsay, of Automatic Electric, wrote the following memorandum on January 18th, 1949:

Referring to the memo on the subject company dated January 15th, I have been informed by Mr. Brazier that we have sold this company solely on a list price basis to date. So far as their Magnet Wire requirements are concerned, the customer has not questioned our price nor asked for any consideration. We understand that Federal supplies them with the bulk of their Enamel Wire requirements due to the fact that they stock the sizes which Phono-Motors require on the size and type of spool which the customer specifies. We are presently investigating this situation to determine if we cannot get a better share of their business.

It is our feeling that either Canada Wire or C.G.E. are attempting to get in on this business and have broached the question of special prices. There is, however, no question but that they should qualify for Manufacturers' prices due to the amount of Magnet Wire they are now using. We would be agreeable to the suggestion of having this firm put on the Manufacturers List as at February 1st.

(Exhibit 217)

In evidence Mr. Lindsay said:

Q. Do these memos together constitute an instance of where a particular firm is being recommended for inclusion on the wholesalers' list and where the views of the other manufacturers are being canvassed?

A. That is not an electrical wholesaler.

Q. This is a manufacturer?

A. Yes.

Q. There is what you call the manufacturers' list?

A. Yes, that applies on magnet wire.

Q. This was an instance of where one manufacturer was asking the inclusion of a certain company on the manufacturers' list?

A. Yes, that is what it boils down to.

Q. Do you recall whether this Phono Motors Limited was subsequently included on the manufacturers' list?

A. Yes.

Q. Was it the usual practice in the industry to circulate the name of an applicant to obtain the views of the other manufacturers prior to putting some one on the manufacturers' list?

A. Yes.

(Evidence, pp. 762-763)

F. W. Barnhouse, of Canadian General Electric, said:

Q. I take it that this particular company, Phono Motors, as of January 15th 1949 had not been placed on the manufacturers' list. Is that your understanding?

A. At that time that is correct.

Q. Well then, was there an understanding in the industry that customers who were not on the manufacturers' list or jobbers' list or whatever other special categories of special customers you had, were only entitled to buy a product at the prices as published in the price book?

A. Unless their volume rose to a sufficient quantity that they were entitled to a quantity discount.

Q. Yes, but when you use the word "entitled" it would be - I mean, were there any rules of thumb as to what constituted a quantity, as between manufacturers? I mean, did you classify these various customers into groups?

A. We in our own company had our own ideas and when we felt a customer was in a position he should get the quantity discount we arranged for him to get it.

Q. Yes. Well, all I am interested in trying to find out, Mr. Barnhouse, is the meaning of the last paragraph of this letter. Does it indicate that there was an agreement or an arrangement in the industry that prices to customers who were not on any special list should not be lower than the list price, than the published list price?

A. Normally that is what took place.

(Evidence, pp. 1608-1609)

In a memorandum of February 25th, 1949, with the notation "Copies to all interested parties", T. A. Gass, of Canada Wire and Cable, said, in part:

I would like to suggest, after looking over the agenda of the meeting on March 2nd, that the following should be thoroughly discussed and we should all come prepared to discuss same:

(A) Definition of an agency point
(B) Definition of an acceptable agent
(C) The matter of firm prices vs prices prevailing at date of shipment
(D) Matter of consigned stocks

In connection with item A above, our own understanding of an agency point is "a recognized agency point shall be any place where General Electric Company and/or Northern Electric Co. maintain an office and warehouse stock. Do Sales Offices constitute an agency point? Do local Salesmen constitute an agency point?

Regarding item B above, our understanding is that an agent should not be an electrical contractor or carry on a contracting business, nor should he be an associate or affiliate of a Public Utility or other user.

An agent may be an individual or firm of commission agents or wholesale hardware or wholesale electric supply house. Consideration of agents should be confined to the above type (?).

(Exhibit 62)

In evidence W. R. Greenshields, of Triangle Conduit and Cable, said:

Q. I show you Exhibit No. 62. Do you recall whether you received a copy of that document, Mr. Greenshields? It is dated February 25th 1949. Perhaps if you might refer to the second paragraph of the document where there purports to be a definition of an agency point, and I think that was a matter we discussed this morning, and I was going to ask you if this was, to your knowledge, a discussion which had taken place at a meeting of manufacturers and whether this definition of an agency point is in accordance with your understanding?

A. Yes, I recall this being discussed.

Q. I just wanted to confirm if my understanding was correct that an agency point - I think you explained that this morning that it was your understanding that the industry considered it wherever Canadian General Electric and Northern Electric had a branch?

A. That is right, had a branch office.

Q. And I take it from this memorandum - which I believe is signed or initialled by Mr. Gass, is it?

A. Yes.

Q. That this was a matter which had in fact been discussed at a meeting of the manufacturers?

A. That is correct.

(Evidence, pp. 1440-1441)

On September 9th, 1949, J. H. Fitzgerald, of Phillips Electrical Works, sent the following memorandum to Canada Wire and Cable, Northern Electric and Canadian General Electric with respect to Ideal Electric (Western) Limited:

Will you kindly advise us your understanding of the above company's status as a Wholesaler.

We understand that M's office and ours have been extending them Wholesale prices on the basis that they are a branch of Ideal Electric Incorp. and that G & B's office do not consider them as wholesalers.

We understand that Ideal Electric (Western) Limited is an affiliate company and not a branch of the Toronto or Montreal firms and on these basis there is no reason why they should be extended wholesaler's prices.

May we have your comments.

(Exhibit 187)

On April 12th, 1950, D. C. Brazier, of Automatic Electric, wrote to Mr. Fitzgerald with respect to this matter, and asked:

Was anything discussed or decided at our recent meeting.

(Exhibit 188)

On April 13th, 1950, Mr. Fitzgerald advised him that the matter had not been discussed. (Exhibit 188). In evidence Mr. Fitzgerald said:

Q. Mr. Fitzgerald, is there any reason why the Automatic Electric could not have appointed this branch in Vancouver or put it on the wholesalers' list if it wanted to do so?

A. Not if they are a branch of the Eastern firm who are on the list.

Q. Supposing it was not a branch of the Eastern firm, is there any reason why the Automatic Electric could not put it on the wholesalers' list if it wanted to?

A. Not that I know of, if they felt them qualified.

Q. I note in the first part of Exhibit No. 188, which I think you identified as the handwriting of Mr. Brazier to yourself, it states:

> "Note you recently had T. L. 's file on this operation. Was anything discussed or decided at the recent meeting."

What meeting is referred to there?

A. That would be the meeting of the industry.

Q. And T. L. is Mr. T. A. Lindsay?

A. Yes.

Q. In this particular case it was decided that Automatic Electric should refer the matter to a meeting of the manufacturers before putting this branch on the wholesalers' list?

A. That is right.

Q. Notwithstanding the fact that you could have put it on the wholesalers' list without reference?

A. That is right.

(Evidence, pp. 683-684)

The agenda of a meeting held at the Caledon Trout Club on June 12th and 13th, 1951, included the following item:

2. Distribution

2.1 Wholesalers
2.2 Agents
2.3 Contractors

(Exhibit 321, p. 4)

Minutes of the meeting contain the following references to wholesalers and agents:

2.1 Wholesalers

(a) Lemery's Limited no longer listed

(b) T. J. B. was provided with a lengthy list of new wholesalers or potential wholesalers which he is checking. This list will be circulated at an early date.

(c) Industrial are selling Thomas Electric, of Barrie, and, for the time being, no one else is considering doing so. It was agreed that Gorn Electric, of Montreal, could be sold at wholesalers prices. Canada Wire report that Wood Alexander and MacDonald are getting an additional 5% on Weatherproof Wire.

2.2 Agents

New agents were listed by companies concerned.

(Exhibit 321, pp. 2 - 3)

An unsigned memorandum dated July 24th, 1951, was found in the files of Boston Insulated Wire and Cable, reading as follows:

Electrical Wholesalers

We note M has issued a new listing of Electrical Wholesalers for Western Canada to include Wholesale Electric Limited, Vancouver.

We believe there is some misunderstanding in this connection as, to the best of our knowledge, this account does not qualify and we would suggest no action be taken until M returns from vacation and this point clarified.

(Exhibit 266)

On examination, Mr. V. N. Longtin, of Cables, Conduits and Fittings, said:

Q. Did you ever see listings of electrical wholesalers referred to in this memo?

A. I am not sure if I saw the same list, but I have seen a list.

Q. Is it revised from time to time?

A. Yes.

Q. Who revises it?

A. We receive it from the Northern Electric Company.

Q. They send you the revisions?

A. Along with quotations.

Q. Who decides on the revisions to the list?

A. I think it is every time the group gets together, and somebody admits selling to this party or to that party at wholesalers' or jobbers' prices.

Q. You say a group gets together? Are you referring to a meeting of the manufacturers?

A. Yes.

Q. And it might subsequently be incorporated in a form of revision to the list?

A. That is right. It naturally would be.

Q. And this would likely point out or query one company that appears on the list; is that right?

A. Yes.

(Evidence, pp. 921-922)

G. W. Arnold, of Boston Insulated Wire and Cable, said:

Q. I show you Exhibit No. 266 which is one of the documents removed from the files of your company. The first paragraph refers to "M". Would that be Mr. Macpherson of Northern Electric?

A. I would say so.

Q. Was that one of the functions of the Northern Electric or Mr. Macpherson, to issue the list of wholesalers?

A. He would issue lists at times.

Q. And circulate it to the other manufacturers?

A. Yes.

Q. Would those lists be the lists of jobbers or wholesalers who had been agreed upon at the meetings of the manufacturers?

A. Usually.

Q. I think this list has been referred to in some other instance as the jobber's list?

A. That is right.

(Evidence, p. 1308)

C. S. Leary, of Canadian General Electric, confirmed the evidence that Mr. Macpherson prepared and circulated lists of wholesalers for the information of the industry. (Evidence, p. 1509).

A meeting of representatives of the manufacturers held on February 20th, 1952, discussed a wide range of matters including adjustments of certain prices, additions to the list of wholesaler items, prices charged or to be charged to certain firms, and appointments of wholesalers and agents. (Exhibit 121). In his memorandum of "Notes from February 20th Meeting" (Exhibit 121), D. C. Borden, of Northern Electric, noted the following items:

> The following wholesaler appointments are not settled. N. E. to review any on which an asterisk is shown.
>
> (Exhibit 121, p. 2)

Under this notation twelve firms are listed, three marked by an asterisk.

Mr. Borden's notes state further:

> We are to check the price at which we are selling Building Wires to A. V. Roe at Malton, Ontario.
>
> Consideration to be given to establishing prices on all wire and cable products when sold to Canadian Westinghouse Supply. No others are established at the moment, than 15% wholesaler items. Full information should be given in our trade price book, when established.

We are to check if Thompson Sutherland are N. E. Agents.

The following agents to be added:

Cockrane Stevenson Western Ltd.	I. W. C.
Mahon Electric, Fort William	F.
Niagara Vallance Brown, St. Catherines	C. C. F.

Thought is to be given to a new geographical study of permissible agency points.

(Exhibit 121, p. 3)

Examined on this exhibit, Mr. Borden said:

Q. Would you refer to the memorandum which you prepared, dated February 21, 1952, and say whether the February 20th meeting refers to a meeting of the representatives of the various manufacturers?

A. I would say so, yes.

Q. Were the various subjects which are referred to in your memorandum subjects which were discussed at the meeting with the other manufacturers?

A. Yes, this memorandum is some notes on what happened at that meeting. I think everything there was discussed.

Q. Would you refer to page 2 of your memorandum and the second last paragraph:

> "Thought is to be given to . . . permissible agency points."

Could you say what "permissible agency points" are?

A. I was just wondering if I knew enough about that to tell you the story. The only thing I can do is tell you what I do know about it. The word "agency" refers to a different selling arrangement from wholesaler or jobber. There are non-wholesale items, such as a power cable, a manufacturer sells them through its agency. These agents might be and are very often the same company as the wholesaler but not necessarily. An agency is a big operation. I believe it is some years ago it was agreed that agencies should not be set up haphazardly and they should only be in the larger cities, and that has been carried on for some time, particularly in the larger cities. In fact, I think, perhaps, that was defined a little differently. It was considered justifiable for an agency to

open where Northern Electric and Canadian General Electric had warehouses. If I have this thing right it was understood that agents would be appointed where there were warehouses by either Northern and Canadian General Electric or jointly or both and I think I am also right in pointing out the reason for that was not any protection of anybody but it was just a convenient way of deciding when a city was big enough. So it was set up that way and recently that seems to have worked some hardships because there is one district where Northern and General Electric both have warehouses in the same large city, but there are a number of other cities where there could very well be agents but this friendly co-operation that goes on, the people who want to appoint agents were trying to do away with this unwritten rule and it was pretty well admitted that it was out of date and ought to be revised, and rather than have one manufacturer appoint an agent in a town where there was no Northern or General Electric office which would mean that there would be a whole storm of similar things all over Canada because that was what would happen. Once anyone does this, i.e., appoints an agent, another manufacturer has something he wants to do and it is repeated all over and instead of getting one agent there are ten agents. The number of agents had to be increased because of the growth of the wire and cable business, so it has been found best to move slowly so instead of this concern saying, "We are going to have an agent anyhow", they get together at this meeting and say, "Let us change the rules, but let us do it in an orderly fashion. That custom is out of date so let us change it, but in the meantime we won't jump off". As a matter of fact, they did jump off, anyhow.

Q. When they did jump off was there this competitive flurry that you referred to across the country?

A. No, there were instances of it but it didn't happen. The reason it didn't, people just didn't want that. It is like starting a war. It makes you feel good at the first but not so good at the end.

Q. You are speaking of the manufacturers?

A. Yes.

(Evidence, pp. 471-474)

In the course of the inquiry a number of witnesses were questioned generally on the practice governing the appointment of wholesalers and of agents. Extracts from this testimony follow.

T. A. Lindsay, of Automatic Electric:

Q. In your capacity as a representative attending these meetings of the manufacturers, do you do so as the second representative of the Phillips Electric, or do you go representing the

A. I represent the sales company.

Q. I take it, one of the subjects that you would be primarily interested in would be the appointment of wholesalers?

A. That is correct.

Q. Is there generally an agreement between the manufacturers as to the standards which are required of a firm before it can be appointed a wholesaler?

A. I would say so.

Q. What are the factors which influence a decision of the manufacturers in either approving or disapproving of the appointment of a wholesaler?

A. Oh, size and ability of the firm to handle the products on a proper basis.

Q. Do you make recommendations, that is, on behalf of your two companies or the Automatic Electric, which is the sales company, would you make recommendations to those meetings?

A. If we have a likely candidate for a wholesaler status we would state we would want to appoint that firm or that man as a wholesaler.

Q. Since you have been attending these meetings during the past five years, has the tendency been to restrict the appointment of wholesalers or to extend the list?

A. I would say to extend the list.

Q. Is one of the factors which is considered in the approving or disapproving of the appointment of a wholesaler his record as to maintaining the price?

A. That has never been a consideration so far as I am concerned.

Q. From the discussions which have taken place at the meetings which you have attended, has that been a consideration of some of the other manufacturers?

A. I don't believe so.

Q. Is there a marked tendency by the manufacturers generally to appoint on their own a wholesaler without reference to the other manufacturers?

A. There is a growing tendency that way.

Q. Approximately how many wholesalers would be on the recognized list, or are on the recognized list at the present time?

A. I couldn't be sure, but I would say in the neighbourhood of 100.

Q. That would be more than there were five years ago?

A. Yes.

Q. What discussions take place at the meetings with regard to the appointment of agents?

A. In what respect?

Q. You mentioned that the appointment of agents was one of the subjects which was discussed at these meetings, and I was wondering just what the nature of the discussion was or is there an agents' list?

A. There is a list of agents appointed by various companies.

Q. What is the purpose of discussing the appointment of agents at the meetings?

A. Usually just to give notice that certain companies such as ours are appointing an agent at a certain point.

Q. Have you ever come in with a recommendation that such and such an agent be appointed and have other manufacturers object to such an appointment?

A. Not to my knowledge.

Q. Have you ever been at any meetings when some other manufacturer has brought in a recommendation which has been objected to with regard to the appointment of an agent?

A. I believe that there have been discussions.

Q. As a result of these discussions does it sometimes happen that the agent would not be appointed?

A. That is possible.

Q. It is possible, but did it happen when you were at any of the meetings?

A. I can't recollect any instance.

Q. Is there any limitation on the number of points at which your company or any of the other companies may have agents?

A. Generally speaking, we appoint agents at points where the Northern Electric or Canadian General Electric have branches.

Q. Do the other manufacturers follow the same guide?

A. More or less.

Q. Was that arrangement worked out or agreed upon at meetings?

A. That has been something of fairly long standing.

Q. What about the question of the appointment of a wholesaler; has your company ever brought in a recommendation that such and such a wholesaler be appointed and not have that recommendation accepted by the other manufacturers?

A. I don't believe so.

Q. Have you ever attended any meeting when another manufacturer may have brought in a recommendation with regard to the appointment of the particular wholesaler and then find that the other manufacturers were opposed to that appointment?

A. I believe that has happened.

Q. That is, it happened at meetings you attended?

A. Yes.

Q. As a result of discussions which took place at the meeting, was there a decision made that the appointment would not be made?

A. That is true.

(Evidence, pp. 717-721)

W. R. Greenshields, of Triangle Conduit and Cable:

Q. What was the nature of the discussion with regard to jobbers and wholesalers; what was the purpose of discussing it at meetings or what was discussed?

A. Some of the different manufacturers would, I suppose, through different contacts would want to appoint a new jobber, and I should call it a courtesy to the rest of us to let us know they intended to appoint whoever it happend to be as representative of theirs.

Q. If they did so appoint somebody then that did not mean that the other manufacturers could not also extend the same jobber's discount?

A. That is quite right.

Q. Would it be correct to say that if one manufacturer did extend a jobber's discount to a particular outlet that it meant that the others would have to follow suit?

A. If they wanted to sell them they would have to follow suit. I made it very clear that I reserved the right to sell to whoever I wanted to as long as they were recognized as a jobber.

Q. When you say "recognized as a jobber", recognized by whom?

A. By the whole wire and cable industry.

Q. Would that be the purpose of discussing the appointment of jobbers at these meetings, that they would be recognized if a particular jobber was approved; is that what you mean by recognized?

A. Yes.

Q. It was really a seal of approval that the industry put on that particular man?

A. Yes, he was in a position to really distribute as he should be if he was going to be a wholesaler.

Q. Was there a jobber's or wholesalers' list of those who had been recognized as such?

A. Yes.

Q. Who prepared that list?

A. I just couldn't say who prepared that list, to tell the truth.

Q. It was prepared and sent out to all concerned, or did each company prepare its own list?

A. Very often we would add on to our list we already had. It just has been growing for years and years.

(Evidence, pp. 1372-1374)

The testimony of various witnesses and the documentary evidence establish that the classification of customers of wire and cable products, the recognition of customers within each class, the appointment

of jobbers and of agents, and the localities where agents might be appointed, were all matters which were frequently discussed at meetings of representatives of the manufacturers and by memoranda circulated among them. The evidence further establishes that agreements were reached or arrangements made on these matters as part of the underlying policy of "orderly marketing" and "stabilization". While the evidence also shows that, with respect to discussions on the appointment of jobbers, the industry was interested in the appointment of firms which could properly discharge the function of distributing its products, the effect of the system of classification of customers was to impose restraints upon competition which would otherwise have existed. There is evidence that at different times manufacturers appointed jobbers or agents without prior discussion with their competitors and that special discounts were occasionally given by one or other of the manufacturers to certain firms without the knowledge of competitors. Subsequent discussions of some of these actions at meetings and by memoranda showed, however, that such actions were by no means the rule but were exceptions and that they were considered violations of the agreements or arrangements which have long governed the operations of the industry.

2. Discounts

Having established uniform list prices by agreement or arrangement, the wire and cable manufacturers also discussed and agreed upon uniform policies and practices on trade discounts to be allowed to the different classes of customers and on cash discounts, as well as on the products to which trade discounts would be applicable. Failure to agree on uniform discount policies would have made it possible for individual manufacturers to defeat the underlying policy of price uniformity.

Uniform rates of discount have been established by agreement or arrangement for each of the following classes of customers:

- Wire and cable wholesalers (jobbers)
- Radio jobbers
- Contractors
- Manufacturers
- Steam and electric railways
- Dominion Government Departments and Crown companies
- Electric power and distributing companies (including municipal public utilities)
- Municipal Government Departments
- Provincial Government Departments
- Pulp and paper companies
- Mining and smelting companies
- Certain special customers

(1) Trade Discounts

Until 1948 a wide variety of wire and cable products was sold through wholesalers who were tied exclusively to individual manufacturers by agency agreements. As this system restricted the number of wholesale outlets available to any one manufacturer, it created

dissatisfaction both among the jobbers and among the larger manufacturers. The system was changed in 1948 but the change had apparently been under consideration by the manufacturers for some years. In an inter-office memorandum dated October 6th, 1944, T. A. Gass, of Canada Wire and Cable, reported, in part, as follows:

> At a Meeting of Northern Electric, C. G. E. Phillips Electrical Works' sales managers with the writer in Montreal last Tuesday, the question of post war sales of Rubber Covered Conductors and Flexible Cords was discussed at length, largely as the outcome of similar discussions between the four above mentioned at previous meetings.
>
> . . .
>
> In view of the above, our feeling is that the four companies above mentioned should take a firm stand that we are prepared to set a jobber's price and maintain same, reserving however, the right to sell large utilities, large contractors, and large industries, whose volume of purchases is probably as great or greater than those of any jobber at the same price as we would sell to jobbers.
>
> The jobbing industry could then set their own resale price, and the local houses of the Northern Electric, C. G. E. would work with local jobbers in the establishing of such resale prices, but of course reserving the right to meet any cuts that might be made by independent jobbers.
>
> If this policy were pursued it would open up the whole jobbing field to ourselves as well as other manufacturers, whereas now the principal jobbing outlets are tied up under agency agreements, but we must realize that our company does not stand very well with the jobbing trade, and also, that if we insisted on other jobbing accounts being open to us in the same way our jobber-agents, such as J. S. Mitchell, H. M. Hopper, D. C. Keddy, etc., would be open to other suppliers.
>
> If this policy were followed out it would be imperative that we be in a position to supply Non-Metallic Sheathed Cable to the jobbing trade as soon as such policy should be decided upon.
>
> The above mentioned policy has the approval of Colonel Harkness and Mr. C. F. R. Jones of the Northern Electric Company, and I would request serious consideration of it from the standpoint of our Company. Personally, I am prepared to recommend it as a possible solution which might work out to our ultimate advantage.
>
> It is realized that we would probably have a great deal of difficulty with the other companies, such as Federal, Boston, Triangle, etc., in that, their whole sales effort is through jobbers and they have no sales organization, but if the four large companies

maintain firmly a policy of this kind the others would more or less have to fall in line provided the prices to the jobbers were set at a sufficiently low level to discourage cutting below same in the form of agents' discounts.

There might have to be some compromise with this policy which could probably be easily worked out.

(Exhibit 362, pp. 1-2)

In evidence Mr. Gass said:

Q. Did the four companies referred to, that is, Northern Electric, C. G. E., Phillips Company and your own company, take action along the lines indicated following the war?

A. It proved to be entirely unnecessary because the other companies that I referred to fell right into line. They sensed the feeling of the jobbing trade.

Q. The last paragraph on that page, do I understand that following the war the jobbing outlets were not tied up to the same extent with agency agreements?

A. As from a certain date which I have forgotten we cancelled our agents of building wire and cable and opened it up to anyone buying it. Similarly the other manufacturers on or about the same time cancelled their agency arrangements with their jobber agents on building wires and cables.

(Evidence, pp. 1719-1720)

In 1947 the sale of weatherproof wire was changed from a tonnage to a footage basis and at the same time an agreement was made on the discount to be allowed to jobbers on such wire. On May 20th, 1947, W. R. Greenshields, of Triangle Conduit and Cable, circulated the following memorandum:

Referring to our recent discussion re weatherproof wire to jobbers, we feel that something should be arranged at once so that there will be some uniformity so far as the distribution of this material is concerned.

We feel that the set-up suggested looks to be the fairest to all concerned with the exception that 1000 ft. coils should be included, particularly on sizes #6 and #8, and would appreciate hearing from the different interested parties just as early as possible.

(Exhibit 112)

On June 3rd, 1947, K. P. Macpherson, of Northern Electric, circulated a memorandum to which were attached suggested zone list prices for double braid weatherproof copper wire in coils of different sizes. The memorandum said:

> The attached is suggested set-up for Jobbers (10% discount).
>
> Do you concur?
>
> (Exhibit 50)

In his testimony, T. A. Gass, of Canada Wire and Cable, identified the memorandum and said:

> A. . . . On or about this time it was decided to set up a list price per 1,000 feet for this product which had formerly only been sold on a basis of price per pound. This list price per 1,000 feet included a discount of 10% to the electrical jobber for warehousing and handling this product. Would that fully answer the question, Mr. Hunter?
>
> Q. I think it does. This was something that the industry adopted?
>
> A. That is correct.
>
> Q. Including the 10% figure?
>
> A. That is correct.
>
> (Evidence, pp. 1703-1704)

On or about February 2nd, 1948, a major revision of the jobber-agent set-up was put into effect by the industry. Wire and cable items previously sold through agents were classified as wholesaler items and the commissions or discounts to agents on such items were discontinued. The 6 per cent discount to wholesalers previously in effect on wholesaler items was increased to 15 per cent, but on weatherproof wires and cables and service entrance cables a 10 per cent discount was to be allowed. Changes were also made with respect to discounts to other classes of customers and on other products.

Before the new jobber-agent set-up was introduced, it was discussed and agreed upon by representatives of the various companies. On December 4th, 1947, K. P. Macpherson circulated a memorandum to these representatives advising them of a meeting to be held in Toronto on December 8th, 1947. (Exhibit 84). The following items were on the agenda:

> Notes re - Distribution
>
> 1. Policy

2. Jobber Items

Code Wire Type T
Code Wire Type R - 600 volts
Non-Metallic Sheathed Cable
AC Cable
ACL Cable
Flexible Cords
S & SJ (limited to 18 - 10)
Annunciator Wire
Office Wire
Weatherproof Wire (250 and 500 coils)
R. I. L. C. (14 - 4 - 600 volts)

3. Discounts (except Weatherproof)

Jobbers	to warehouse
	direct to customers
Contractors	
Manufacturers	
Steam Railways	
Dominion Government	
Chain Stores (Cords)	

4. Contractors Definition

5. Cash Discounts

6. Agents

Bare
Weatherproof
R. C. & P. V. C.
Power Cables
Magnet
H. D. Jacketted Cables

7. New Code

(Exhibit 85)

Between January 21st, and January 30th, 1948, Canada Wire and Cable, Automatic Electric, Northern Electric and Canadian General Electric issued memoranda notifying their branch offices and district managers of the new sales policy with respect to wholesalers (Exhibits 363, 203, 86 and 342), and outlined such policy in detail. In each case the definition of wholesaler items, the discount to be allowed to wholesalers and to other classes of customers, the new policy with respect to agents and the commission to be allowed to agents, were the same, with the exception of the discount on welding cable, which, as was later shown, was not the same in each announcement because of some confusion. In,

each case it was also announced that the new policy was to be made effective on February 2nd, 1948.

Examined on Exhibit 86, which was the notice of the change of policy sent out by Northern Electric, Mr. Macpherson said:

Q. My question was, does this represent the implementation of the policy or the agreements that were arrived at, at the meeting of the manufacturers' representatives on December 8, 1947?

A. I think perhaps it does.

Q. Did all the manufacturers implement this same policy to which you have referred in this inter-office memorandum?

A. I assume perhaps they did.

Q. Do you know?

A. I do not know anything to the contrary.

Q. Do you know whether they did?

A. I expect they did.

(Evidence, p. 229)

Examined on Exhibit 203, which was the announcement of the change of policy issued by Automatic Electric, J. H. Fitzgerald, of Phillips Electrical Works, said:

Q. Could you refer to the memorandum in the first paragraph:

> "Further to my telephone conversation with you regarding the proposed change in the jobber agent set-up, this matter has now been fully clarified and I am setting out below the details of our new arrangement."

Do you know to what Mr. Lindsay refers when he refers to the change in the jobber agent set-up?

A. Yes.

Q. And when he refers to the details of our new arrangement, does that refer only to an arrangement with respect to the jobber agents of Automatic Electric, or does it refer to an arrangement with respect to the jobber agent set-up for all manufacturers?

A. It refers to the industry.

Q. I take it from what appears in the memorandum that Mr. Lindsay is then setting out for the benefit of certain persons in the Automatic Electric just the details of the arrangement?

A. That is correct.

Q. But it was an arrangement which was made for the industry?

A. Yes.

(Evidence, pp. 672-673)

Mr. Lindsay said:

Q. You refer in this Exhibit No. 203 to the proposed change in the jobber-agent set-up. This is dated January 23, 1948. Do you recall whether this change in the jobber-agent set-up was a change that had been adopted by all the manufacturers?

A. Yes.

Q. It was?

A. Yes.

Q. Was this one of the subjects which were discussed at meetings of the manufacturers?

A. Yes.

Q. And as a result of the discussions which took place was it agreed that this new jobber-agent set-up would be established?

A. Yes.

Q. Was it also agreed that it would go into force as of a certain date?

A. Yes, I believe so.

Q. You were present at the meeting at which this was discussed?

A. Yes.

Q. Would you recall whether the effective date of this new jobber-agent set-up was February 2, 1948?

A. That applies to a cash discount.

Q. What about the rest of the jobber-agent set-up; was there any effective date that you recall?

A. No, I don't recall a definite date.

. . .

MR. HUNTER: Q. I was wondering if I could ask one more question in regard to Exhibit No. 203 regarding the effective date. Would you refer to page 2 at the last paragraph on the page?

A. Yes.

Q. Does that indicate that new prices other than merely a cash discount would come into effect on February 2, 1948?

A. Yes, new price sheets.

Q. And there would be new price sheets in view of the changes in the groups that would be allowed jobber's discount?

A. If I recall correctly, the jobber discount prior to this time was 6%. It was changed to 15% with a re-shuffling of prices in the price sheets.

Q. The effective date of that was February 2, 1948?

A. That is correct.

(Evidence, pp. 741-744)

Having regard to the fact that each of the "Big Four" advised their branch offices and district offices that the effective date of the new jobber-agent set-up was to be February 2nd, 1948, it would appear that this date was fixed by agreement. However, on January 29th, 1948. W. C. Wilde, of Automatic Electric's branch in Edmonton, wired to D. C. Brazier in Toronto, as follows:

> We were shown today new discount sheet from Triangle showing fifteen percent on all items to jobbers effective January twenty seventh we have had no word from you on this would you please advise.
>
> (Exhibit 205)

On January 30th, 1948, T. A. Lindsay sent the following reply to Mr. Wilde:

> Retel wholesaler discounts circular letter sent Hunter January twenty third for distribution to salesmen suggest you contact Winnipeg office stop new arrangements to be effective February second can you verify Triangles sheet effective January twenty seventh.
>
> (Exhibit 206)

It appears from the foregoing that Triangle Conduit and Cable, intentionally or unintentionally, refrained from adhering to the effective date which had apparently been agreed upon.

The agreement on the new jobber-agent set-up included a restrictive feature with respect to consigned stocks. On August 5th, 1949, L. G. Lumbers, of Canada Wire and Cable, replying to a letter from George Kirlin, of the Montreal office of the Company, said, in part:

> When this new policy of selling through wholesalers was put into effect some year and a half ago, it was on the definite understanding that all consigned stocks would be eliminated and that on wholesaler items agents would have no advantage whatsoever over those other wholesalers who were not agents of any particular wire and cable company. The thought behind this was in each of the large centres there are many times the number of wholesalers that there are wire and cable companies; consequently an agent received an advantage over the other wholesalers. Most of the smaller wire and cable companies claim this was not fair and that on wholesaler items they reserved the right to sell anyone regardless of whether they were an agent of any particular company or not, on the same basis. To compromise it was agreed upon that all wholesalers could purchase wholesaler items on an equal basis but that only appointed agents could receive any commission on special items such as Tonnage Materials, Power Cable, Special Trailing Cables, etc.
>
> We understand definitely that all other companies have cleaned up their question of consigned stock long ago with the exception of Federal Wire & Cable, who have just now cleared theirs up, and it is up to us to do the same.
>
> (Exhibit 377)

In evidence Mr. Lumbers said:

Q. Would you refer to the document and then I would like to ask you a question with relation to the reference in the third paragraph. The third paragraph refers to a new policy of selling through wholesalers to be in effect from a year and a half ago and this document is dated August 5, 1949. Was that when a new wholesalers' sales policy was adopted by your company?

A. That is what I would take this to mean. I think this is just before my time.

Q. Before you came in as General Sales Manager?

A. Yes; we formerly sold at 6% and we gave agents 7 1/2%. We gave everyone who were recognized wholesalers 15%.

Q. At the time you did that, I take it, that was the policy that was adopted about the same time by all the manufacturers?

A. Yes.

Q. Was it also part of that policy that consigned stocks would be eliminated?

A. Yes.

Q. Consigned stocks would be in the hands of agents?

A. Yes. You see, if we had an agent we put whatever we thought he could sell down there. That would not be billed to him until he actually sold it, at what time invoices would go through.

Q. When you refer to the definite understanding that all consigned stocks would be eliminated, was that an understanding as between the manufacturers?

A. That is right.

(Evidence, pp. 1789-1790)

A memorandum dated July 12th, 1948, from J. H. Pryce, of Canada Wire and Cable, to E. W. Johnson, of the Vancouver office of the company, reads as follows:

> We thank you for your letters of July 5th and 8th with respect to special discounts being extended to certain customers in your territory.
>
> We understand, of course, that certain customers in your territory always have enjoyed some form of discount on Rubber Covered Wires and Weatherproof Wires because of the volume of their purchases and we gather that this is merely a continuation of that arrangement. We fail to see, however, why such concessions should be made since we in the East confine our discounts to those established on the recognized list. On the other hand, if the other manufacturers are allowing these special discounts then we have no other alternative but to follow suit but in any event we would be interested in receiving your comments in this regard.
>
> You mention in your letter of July 8th that Automatic Electric have been allowing F. C. Myers Limited 15% off on Rubber Covered Wire, Cables and Flexible Cords. You do not mention, however, whether they intend to continue doing so. If in your opinion and the opinion of the other manufacturers this Concern is a recognized wholesaler then they should be added to the list of wholesalers currently appearing in our Price Book. Please advise fully on this matter.

You also mentioned that there was some misunderstanding as to the discount on Welding Cable, but you do not state just what this misunderstanding was. We would be pleased to receive your report on this question for record purposes.

(Exhibit 375, p. 2)

Evidence of discussions and agreements on discounts at a local level appears in a memorandum dated August 4th, 1948, to T. A. Lindsay, of Automatic Electric, from W. Mulroy of the company's office in Vancouver, reading as follows:

In confirmation of our telephone conversation of yesterday.

At a recent meeting in Vancouver the manufacturers agreed that firms on the wholesaler's list should receive a 5% discount on the following types of material:-

Bare Copper Wire
Magnet Wires
Telephone Wires
Asbestos Wires

While our price book has never shown a discount applicable to wholesalers on these items of material, it has been the practice for many years to allow a 5% discount. The sales to Jobbers of these materials has always been negligible, and it was felt that the discount allowed would satisfy the jobbers, and would not affect other arrangements.

When the revised wholesaler's price set-up went into effect in February the question of discounts on these items was discussed and all firms, with one exception, agreed that the discount should be discontinued. The matter was left undecided, at that time, but it was discovered later that the one firm had continued to allow the discount. This firm was reluctant to discontinue the practice so the others agreed to allow same. It was also agreed that the following firms are to receive a 6% discount on rubber covered wires and cords and a 5% discount on Philex and Type "AC" Cable:

Fleck Bros.	- An old established mine and mill supply house.
Black Bros.	- An automotive and radio supply house.
Wood Vallance	- A hardware house in Nelson, B. C.
Monteith Sales	- A firm with several electrical agencies, which has operated in Vancouver for 10 years or more.
Lipsett Ltd.	- An old established ship-chandlery firm.

Our competition is now aware of the fact that we are supplying F. C. Myers Co. Ltd., at wholesaler's prices.

(Exhibit 210)

On August 9th, 1948, Mr. Lindsay sent a copy of the foregoing to J. H. Fitzgerald, of Phillips Electrical Works, suggesting that the matter "should be discussed at the meeting on August 19th". (Exhibit 211)

On August 25th, 1948, Mr. Lindsay instructed Mr. Mulroy to withdraw the 5% discount on bare copper wire, magnet wires, telephone wires and asbestos wires, but advised him with respect to the extension of the 6 per cent and 5 per cent discounts on the items and to the firms listed in his memorandum of August 4th, that:

> . . . we are in agreement with this action, as it falls within the limits of the policy on discounts covered by a separate letter.

(Exhibit 212)

Mr. Lindsay's advice to his Vancouver office was apparently based on a decision reached at the meeting of manufacturers' representatives on August 19th to abide by the new jobber-agent set-up of February 1948 and to permit local arrangements to be made only within its limits. Under that set-up bare copper wire, magnet wire, telephone wire and asbestos wire were not classified as wholesaler items.

In evidence, Mr. Lindsay said:

Q. Can you say from memory or from refreshing your memory by looking at Exhibit No. 212 whether this exhibit which was dated August 25, 1948, was on this same subject of wholesalers' discounts in the Vancouver area?

A. Yes.

Q. And having refreshed your memory do you recall whether in the intervening period between August 4 and August 25 whether a meeting of the manufacturers was held at which this problem was discussed?

A. I believe it was.

Q. This helps to refresh your memory of that?

A. Yes.

Q. It was a meeting of manufacturers?

A. Yes.

(Evidence, p. 756)

Further evidence of discussions with a view to agreement on discounts appears in the following memorandum of November 1st, 1948, from Mr. Lindsay, of Automatic, to J. H. Fitzgerald, of Phillips Electrical Works:

> Referring to G's memo of October 27th, we are in agreement with the suggestion that a discount of only 5% be allowed radio jobbers on their purchases of Types POSJ, POT and PO Cotton Cords for power leads.
>
> (Exhibit 213)

Examined on this exhibit, Mr. Lindsay said:

Q. Can you say, Mr. Lindsay, that this was a memo that you sent to Mr. Fitzgerald?

A. Yes.

Q. I gather from the context that it was the result of a memo from "G" that Mr. Fitzgerald had referred to you?

A. Yes.

Q. And "G" is Mr. Gass of Canada Wire & Cable Company?

A. Yes.

Q. The subject matter was a discount of 5% for radio jobbers for certain types of wire or cable?

A. Yes.

Q. Do you know whether this discount was subsequently adopted in the trade?

A. I believe it was.

Q. By all the manufacturers?

A. Yes.

(Evidence, pp. 757-758)

Notes taken by T. J. Bell, of Federal Wire and Cable, and found in the files of Boston Insulated Wire and Cable, show that a discussion on classification of customers for discount purposes took place at a meeting of manufacturers' representatives held on January 24th, 1950. Item 2 of these notes reads, in part, as follows:-

A good deal of discussion centred around the problem of classifying jobbers into A and B jobbers. No action was to be taken until the House had completed its present session. It was felt that under present circumstances it might be rather embarrassing to classify some of our jobbers as B jobbers and have to change their discounts.

(Exhibit 304)

With respect to the new jobber-agent set-up of February, 1948, the exhibits show that the companies intended to establish a uniform list of contractors who would be entitled to a discount of up to 10 per cent on certain products. Additional names were added to the list from time to time, usually after discussion among the manufacturers. For example, in a memorandum of February 12th, 1948, J. H. Fitzgerald, of Phillips Electrical Works, wrote to T. A. Lindsay, of Automatic, with reference to A. G. Fairbanks Electric Ltd., a contractor, as follows:

With reference to Mr. Sauves' report of December 17th, which I am returning to you herewith, I had a very interesting discussion with C. W. of M's office on which I will advise you verbally. The main point in connection with the conversation is that for the time being at least, we should continue as we have in the past, that is if you feel that it is desirable that we should take on this customer, and you should try and find out, by trial, the discount level. We presume therefore that you will take the matter up with Mr. Caveney and get his recommendation after which you should clear it through us in the usual way before putting anything into effect.

I also had a call from "B" in this connection and advised him along the same lines.

(Exhibit 208)

In evidence Mr. Fitzgerald said:

Q. Would you refer to the memorandum, please, and say who is "C. W." and "M.'s office"?

A. That would be Woolgar, I believe.

Q. Of the Northern Electric?

A. Yes.

Q. And in the last paragraph you state:

> "I also had a cail from B. in this connection and advised him along the same lines."

Who is "B"?

A. Barnhouse.

Q. Of Canadian General Electric?

A. Yes.

Q. This was, I take it, a matter of the appointment of a particular company as a wholesaler or jobber; is that correct?

A. I believe they are contractors.

Q. If they were contractors, then is there a special contractors' list distinct and separate and apart from the wholesalers' list?

A. No, he was one of the large contractors who by virtue of their large purchases got a discount.

Q. Is that discount to large contractors given by all the manufacturers to the same contractors?

A. There is a fairly well defined list now, I believe.

(Evidence, pp. 674-675)

Under the jobber-agent arrangement of February 1948 contractors under contract to utilities were to be allowed a discount of 10 per cent on weatherproof wire and cable for specific contracts. When Canada Wire and Cable was faced with the special case of a sub-contractor, who, it believed, was entitled to the 10 per cent discount, T. A. Gass sent the following memorandum, dated November 4th, 1948, to Messrs. Macpherson, Fitzgerald and Barnhouse:

For record purposes we should like to outline a recent case which has come to us concerning the 10% discount on Weatherproof Wires and Cables.

On the present basis of discounts, contractors under contract to any of the recognized preferred customers engaged in erecting transmission and distribution lines for that specific contract may be allowed a 10% discount.

The case in question has to do with Bedard & Girard Limited, who are doing temporary electrical work for the Pentagon Construction Company, who in turn have the original contract from the Ontario Hydro for the Chenaux Power Development of the Ottawa River.

Under these circumstances, we feel that Bedard & Girard are entitled to the 10% Discount since they are doing the electrical works for the original contractor. We believe you will agree

with us in this respect and unless we hear from you to the contrary we propose allowing a 10% discount to Bedard & Girard in this particular instance.

(Exhibit 214, p. 1)

On November 5th, 1948, Mr. Macpherson replied as follows:

With reference to G's memo of November 4th, we concur.

(Exhibit 214, p. 2)

Minutes of a meeting of manufacturers' representatives held at the Caledon Trout Club on June 12th and 13th, 1951, contain "an up-to-date list" of "10% contractors", and the list of "contractors at 5% in Vancouver", as well as additional names for consideration "on 10%". (Exhibit 321).

Exhibit 119, listing items to be "added to next meeting's agenda", and referring apparently to a meeting of manufacturers' representatives held in April 1952 (Evidence, p. 467), includes the following heading: "Contractors approved list". Explaining this item, Mr. Borden, of Northern Electric, said:

A. . . . So the reason this becomes necessary is that the manufacturers are defending themselves against these tactics of the contractors who deliberately come to us to get 10% from the Canada Wire & Cable, and next day they come to Canada Wire and say they are getting 10% from us, and so we finally give up and get a list with these people who are big enough to get 10% and we stick together.

Q. The manufacturers will stick together on the one list?

A. Yes.

Q. It will be the contractors who are entitled to 10% less?

A. Yes; that does not work nearly as well as I told you. People are always jumping on and off and there is a lot of competition.

Q. I believe you said earlier this was the most competitive part of the business?

A. Very definitely.

Q. And therefore, this is an action that the manufacturers found necessary in order to protect themselves from this competition?

A. To protect ourselves against buyers who tell us incorrect stories about the competition. The buyer says definitely

that Canada Wire is giving him a 10% and we find it is not so. It is a clearing house to eliminate some of the volume of stories that customers use to try to bring prices down to an uneconomical level.

(Evidence, pp. 468-469)

It follows from the exhibits and the testimony that the wire and cable manufacturers discussed and agreed upon uniform trade discounts to customers in each classification, as well as upon the items to which the discounts were to apply. The evidence also shows that while such agreements or arrangements were entered into, individual manufacturers would occasionally allow secret discounts "to firms not recognized as authorized electrical jobbers". (Exhibit 209). When this was discovered by competitors, it became a matter for complaint and discussion. (Exhibit 222).

(2) Cash Discounts

The evidence shows that the manufacturers have at various times been subject to pressure from jobbers, acting through their association, with regard to cash discount terms. It further shows that the policy adopted by the industry from time to time was discussed and agreed upon by the manufacturers. K. P. Macpherson, of Northern Electric, confirmed this in his evidence, as follows:

Q. Would it be correct to say that the policy on cash discount was discussed at the meetings of the various manufacturers' representatives; is that one of the subjects which was discussed?

A. It may have been discussed once or twice. It was not a general subject of discussion.

Q. When changes in the cash discount to which you have referred previously were made or were being considered, would they be considered at the manufacturers' meetings?

A. Yes, they would.

Q. And as a result of the decision which would be made at those meetings, then the discount would be changed; is that correct?

A. It is correct, but I have never believed they were.

(Evidence, p. 238)

The cash discount allowed by the wire and cable companies has varied as follows:-

Before July 1st, 1940 - cash discount of 2% 10 days.

From July 1st, 1940	- cash discount of 1% 10 days from date of invoice, net 30 days.
From February 2nd, 1948	- no cash discount, net 30 days.
From May 1st, 1950	- cash discount of 1% 10 days or net 30 days.

Memoranda dealing with cash discount terms have been circulated among the companies for many years. For example, on February 5th, 1935, K. P. Macpherson, of Northern Electric, advised by memorandum as follows:-

> In future price sheets will show cash discount terms. In the meantime an index showing terms will be sent.
>
> (Exhibit 9, p. 3)

On February 15th, 1935, Mr. Macpherson sent the following memorandum to P. A. Timmons, with copies to Messrs. Gass, Leary, Smith and Arnold:

> With reference to your letter of January 25th, the 2% cash discount applies to Price Sheet of April 1, 1933, on Car Wire.
>
> In reply to the second paragraph of your letter, Loom is covered by another group and I assume there is no change to be made in the 2% ten days.
>
> Sheets 59.2 and 59.3, covering Radio Hook-Up Wires, have been re-issued and the additions requested have been made.
>
> (Exhibit 10, p. 9)

In 1940 an agreement covering the electrical wire and cable manufacturers as well as the manufacturers of other electrical products was reached reducing the cash discount from 2 per cent 10 days to 1 per cent 10 days from date of invoice, or net 30 days, to all classes of customers. It became effective on July 1st, 1940. On June 14th, a committee representing the manufacturing groups, including the wire and cable group, which was represented by T. A. Gass, sent out the following letter:

> Quite recently you were contacted in the matter of uniform cash discounts pertaining to the construction material product lines of the Electrical Industry.
>
> The cash discount under consideration was 1% ten days from date of invoice, or net thirty days, and to apply to all classes of purchasers.

You, along with the other Companies tabulated on Appendix "A", have approved this cash discount for use with the product lines enumerated on Appendix "B".

This cash discount will go into effect on Monday, July 1st, 1940, with the possible exception that in the event that the Dominion Budget is brought down before that date with any changes that would affect prices in general, necessitating reprinting of present price sheets, this 1% cash discount will then become effective at that time.

This discount will in all probability differ from that shown on your present invoice. It is therefore urged that this new cash discount be clearly marked on the form and that your forms be reprinted at the earliest opportunity.

As you will probably wish to notify your customers of this change, we are attaching a suggested letter that you may like to use, as written, or in a modified form.

Thank you for your co-operation.

(Exhibit 364, p. 6)

The new discount policy did not meet with the approval of the jobbers but, after further discussion, was reaffirmed, as appears from the following memorandum dated July 12th, 1940, from T. A. Gass to the other wire and cable manufacturers.

The Manufacturers Committee on Cash Discounts met to-day and having heard from the six manufacturing groups whom they represented, as well as various individual manufacturers who were not represented, the unanimous opinion of the Committee which seemed to be the opinion of all the manufacturers, was to the effect that the decision previously arrived at to the effect that as from July 1st, 1940, the Electrical Supply Manufacturers would quote Cash Terms of 1% 10 Days, Net 30 Days, was reaffirmed.

A letter was written by the Committee to the Secretary of the Distributors Committee, advising them of this decision, a copy of which letter will be sent to each manufacturer who has agreed to these terms at the same time as it will reach the Secretary of the Distributors Committee.

The above, we believe, closes the matter as far as the terms are concerned, and after the individual companies have received the official letter from the Committee, it will be in order for them to reply to any communications they may have had from various jobbers in connection with cash discounts.

In the writer's opinion it would be advisable, if Mac would immediately issue a sheet, giving the new trade discounts, so that the various companies replying to jobbers in connection with Cash Discount terms could, at the same time, make mention of the revised trade discount.

Naturally, the writer said nothing of the suggested revised cash discount to any member of our organization, or to anyone else, except in the Committee Meeting to-day.

(Exhibit 364, p. 5)

In evidence Mr. Gass admitted that the subject of cash discounts was discussed among the manufacturers who "endeavoured" by arrangement or agreement to follow the same cash discount. (Evidence, p. 1729).

With the adoption of the new jobber-agent set-up in February 1948, already referred to, the manufacturers decided to eliminate the cash discount and to invoice on the basis of net 30 days. This was to be applicable to all classes of customers and to all wire and cable products, except automotive cables on which a cash discount of 2 per cent remained in effect. At the meeting of manufacturers' representatives held on December 8th, 1947, "cash discount" had been one of the items on the agenda. (Exhibit 85). In their notices to branch offices and district managers with respect to the new jobber-agent set-up, Canada Wire and Cable, Automatic Electric, Northern Electric and Canadian General Electric advised that the cash discount was eliminated effective February 2nd, 1948. (Exhibits 363, 203, 86, 342).

The wholesalers, acting through the Canadian Electrical Distributors Association (C. E. D. A.), objected to the elimination of the discount and urged that it be reinstated. Richard Edmunds, general manager of C. E. D. A., wrote to W. R. Greenshields, of Triangle Conduit and Cable, on March 22nd and May 14th, 1948, to this effect. (Exhibits 309, 310). T. A. Lindsay, of Automatic Electric, also heard from C. E. D. A. and discussed the matter with Mr. Barnhouse, of Canadian General Electric. (Exhibit 219). On May 27th, 1948, the latter having also received a letter from C. E. D. A., in his reply asked the wholesalers to accept the new terms of net 30 days. (Exhibit 89). Copies of this reply were sent to the other wire and cable manufacturers.

On June 3rd, 1948, Mr. Edmunds of C. E. D. A., invited Mr. Greenshields, of Triangle, to discuss the problem of cash discounts at a meeting which was to be held at the Albany Club in Toronto on June 22nd, 1948. (Exhibit 311). This meeting was preceded by a meeting of the wire and cable companies held on June 9th, 1948, on which T. A. Lindsay, of Automatic, reported to T. W. Brackinreid, of Phillips, as follows:

As advised you by telephone, an informal meeting was called for 10.00 a.m. Wednesday, June 9th, at the Royal York Hotel to discuss the policy on cash discounts.

The following were present: Messrs. V. N. Longtin, W. Northey, A. Wagman, W. Wagman, W. Greenshields, L. Lumbers, T. A. Gass, C. S. Leary and T. A. Lindsay.

The statement was made that the meeting was purely an informal one to discuss what policy should be followed in dealing with the organized resistance on the part of certain jobbers in accepting our terms of net 30 days. . . .

Following further discussion all present signified their intention of maintaining the present terms and indicated that they would follow our action in returning cheques where the 1% cash discount had been deducted. It was also decided that the various companies involved would approach each of the jobbers following the aforementioned practice and endeavour to get them to fall in line. It was also agreed that if the jobber continued to deduct cash discount, he would receive no further supplies after his credit limit had been reached. According to Mr. Lumbers, Community Electric Supply in Toronto have blamed Canada Wire for their part in eliminating the cash discount and have cancelled all orders on them.

In concluding the discussion it was felt by all present that if manufacturers adhered strictly to their terms of sale, it would only be a matter of time until the recalcitrant jobbers would accept standard terms of sale. . . .

(Exhibit 190)

L. G. Lumbers, of Canada Wire and Cable, confirmed Mr. Lindsay's report. (Evidence, p. 1791). V. N. Longtin, of Conduits, Cables and Fittings, also confirmed the discussion at a meeting in which it was agreed that the manufacturers would stand firm on the policy of net 30 days. (Evidence, pp. 925-926).

The cash discount policy was again discussed at a meeting of manufacturers held on January 24th, 1950, but "there was no decision since the concensus of the meeting seemed to be opposed to the change", although Canadian General Electric "presented an ultimatum saying that the 1st of March, 1950, they intend to adopt the terms 1% 10 days cash discount". (Exhibit 304, p. 3).

On April 10th, 1950, W. R. Greenshields, of Triangle Conduit and Cable, reported to J. E. McAuliffe, president of the company, on a meeting of manufacturers' representatives held earlier in the month. He said, in part:

. . . at this meeting it was decided that all companies as of May 1st would go back to 1% 10 day cash discount and we intend to increase armoured cable for the amount of freight necessary and also include the 1% increase to take care of the cash discount.

(Exhibit 313)

In evidence Mr. Greenshields said:

Q. Would you refer to the second page of the first paragraph at the top of the page where you refer to a meeting held last week? Was that a meeting of manufacturers?

A. It undoubtedly was, yes.

Q. Reference is being made here to some of the matters which were discussed and decisions made at the meetings; is that correct?

A. That is correct.

Q. I take it that this meeting to which you have referred at which the decision was made that all companies as of May 1st would come back to 1% 10 day cash discount?

A. That is correct.

Q. That would be May 1st, of 1950?

A. Yes.

Q. This was a decision that in sofar as the manufacturers of wire and cable products were concerned that they would go to the 1% 10 day discount on May 1st?

A. That is right.

(Evidence, pp. 1410-1411)

Mr. Greenshields' report to Mr. McAuliffe (Exhibit 313), is confirmed by notices sent out during the last two weeks of April 1950 by Canada Wire and Cable (Exhibit 378), Canadian General Electric (Exhibit 344), Automatic Electric (Exhibit 220), and Cables, Conduits and Fittings (Exhibit 270), all of which advised that effective May 1st, 1950, the new terms on wire and cable products would be 1 per cent 10 days or net 30 days, the existing terms of 2 per cent 10 days or net 30 days being retained for automotive wire and cable.

Examined on Exhibit 378, L. G. Lumbers of Canada Wire and Cable indicated that the new policy was the result of agreement among the manufacturers. He said:

Q. That is a document that originated in your office?

A. Yes.

Q. At this time, that is, referred to in this document, May 1st, 1950, was there a new cash discount policy instituted?

A. Yes, if that is the date it says, there was a new cash discount policy instituted.

Q. Was that adopted throughout the industry?

A. To the best of my knowledge.

Q. Had it been discussed at a meeting of manufacturers prior to that time?

A. To the best of my knowledge, it had.

Q. Was it as a result of the discussion and the agreement arrived at that this change was made?

A. Yes.

(Evidence, p. 1792)

It follows from the evidence that the wire and cable companies have by agreement established the same cash discount policies in the interests of price uniformity and of the elimination of price competition. On this point, D. C. Borden, of Northern Electric, said:

Q. To your knowledge is the policy of the other manufacturers the same as the Northern Electric on cash discounts, that is, do you use the same percentage on the same materials?

A. Yes, the cash discount is given a good deal of consideration by the customer as part of the price. If the prices happen to be the same and the cash discount is different, the man with the best cash discount gets the order, therefore, some attention is given to keeping the cash discount the same.

Q. Therefore, the manufacturers take into consideration the cash discount when discussing the over-all price?

A. Yes.

(Evidence, pp. 463-464)

3. Freight Charges

It has been the policy of the wire and cable companies that every manufacturer should sell at exactly the same price. To this end agreements or arrangements were entered into

not only on price lists, tenders, classification of customers, and discount policies, but also on freight charges. In the absence of uniform freight charges and uniform policies on delivered prices, it would have been possible for individual manufacturers to defeat the basic price agreements.

The evidence, including returns filed by the companies, shows that for some classes of products, such as building wires and cables, flexible cords and fixture wires, the manufacturers have operated under a zone pricing system. The Canadian market was divided into seven geographical zones, the boundaries of which were defined, and maps showing the location of such boundaries were prepared. From time to time list prices have been established for each zone, such prices including all or part of the cost to the manufacturer of prepaying freight to customers at points other than the point of manufacture. For zones 1, 2 and 3 (the eastern provinces) list prices for each zone have been uniform delivered prices to all customers within the zone at destinations served by a common carrier. For zones 4, 5, 6 and7 (the western provinces and Newfoundland) list prices have been uniform delivered prices only to specified distributing points within the zone. The distributing points for zone 4 are St. John's, Newfoundland, and Winnipeg; for zone 5, Regina and Saskatoon; for zone 6, Calgary, Lethbridge and Edmonton; and for zone 7, Vancouver and Victoria. On shipments to customers at other points in these zones the actual freight charge from the distributing point closest to the destination has been added to the zone list price to arrive at the delivered price.

The remaining classes of wire and cable, such as weatherproof wire and cable, bare copper wire and cable, magnet wire, annunciator wire, power cables and pre-assembled aerial cable, have been sold on the basis of uniform delivered list prices at specified "free" distributing points, usually three or more of the seven locations of the manufacturing plants. Shipments to points other than the "free" distributing points have usually been invoiced at list prices plus arbitrary shipping charges computed by using what was known as a "map freight rate" and the shipping weight of the wire and cable. In certain specified cases actual freight rates have been used by agreement among the manufacturers.

Most of the information on freight charges has been prepared and circulated by Northern Electric. Map freight rates were set up by taking several destination points within a defined area and working out a common freight rate for all such points. Zone maps were prepared to show the areas within which a common rate applied, such areas being referred to as "map rate sections". Zone boundaries were defined and, for Ontario and Quebec, lists of the principal cities and towns and the map sections in which they fall were compiled. Shipping weights of the various wires and cables have apparently been prepared and circulated by the manufacturers responsible for preparing prices on the several products and have been included on the price sheets with the list prices. These shipping weights did not always represent the actual weight of the cable shipped.

The evidence shows that agreements on freight charges were in effect at least as early as 1933. On May 12th, 1933, K. P. Macpherson, of Northern Electric, sent a memorandum to other interested manufacturers to which was attached the following information:

General
The use of Map Rates on Cab Tire Cables is now discontinued and substituted by shipping zones. Each zone containing one or more Distributing Points. There are six zones as listed below and prices in each zone for f. o. b. the Distributing Points shown therein. Customer to pay freight to destination from Distributing Point.

ZONE #1	ZONE #2	ZONE #3	ZONE #4	ZONE #5	ZONE #6
Montreal, Toronto Hamilton, Brockville Peterboro, Oshawa, Guelph, Kitchener, Chatham, London, Windsor, North Bay, Sudbury, Ottawa, Sherbrooke, Quebec, Three Rivers, St. Johns, P. Q.	Sault St. Marie, New Liskeard, Halifax, St. John N. B.	Fort William and Port Arthur	Winnipeg	Regina, Saskatoon, Vancouver, and Victoria	Calgary and Edmonton

Price Tax Included
Prices for each zone are listed on page #32.

Shipment
Freight charges from Distributing Point to Destination are arrived at by equalizing freight on Distributing Point nearest to customer's destination, equalization being on the basis of actual L. C. L. freight rates.

Example
What is the selling price at Hamilton, Ont. of 1000 ft. #18 2 conductor Type "S" Heavy Cab Tire Cable f. o. b. Woodstock, Ont. The nearest Distributing Point to Woodstock is London and the L. C. L. freight rate between these two points is $0.29 per 100 pounds. The weight per 1000 feet of #18 2 conductor type "S" Heavy Cab Tire Cable is 90 pounds, therefore 90 x $0.29 = $0.26 per 1000 feet. Price per 1000 feet f. o. b. Hamilton (Zone #1) is say $39.50 therefore $39.50 + $.26 = $39.76 which is the price per 1000 feet f. o. b. Woodstock.

(Exhibit 7, p. 7)

On January 27th, 1936, Mr. Macpherson advised by memorandum on the procedure to be followed in determining freight charges on goods shipped from Montreal to various points in New Brunswick:

From Montreal to various points in New Brunswick, such as,

Edmundston	Campbellton	Bathurst
Dalhousie	Newcastle	Chatham
Moncton	Saint John	Saint Stephen
Fredericton	Woodstock	

the same freight rate applies and, in the case of LCL Shipments on Rubber Covered Wire, etc., is 88¢ per hundred pounds.

This means that Collect Shipments of Rubber Covered Wire, Flexible Cords, etc., shipped from Montreal and invoiced at Montreal Zone #1 prices will cost the purchaser (particularly in the northern part of the Province) less than Collect Shipments from Saint John warehouse invoiced at Saint John Zone #2 prices; therefore, in quoting "f. o. b. Destination" prices or in invoicing Prepaid Shipments on such material, prices may be determined in either of the following ways, the one giving the lower destination price to be used.

(a) Zone #1 f. o. b. Montreal price plus freight to destination.

(b) Zone #2 f. o. b. Saint John price plus freight to destination.

The freight in both instances should be calculated by using the weight of the material published in the price book times (x) the actual freight rate.

(Exhibit 10, p. 7)

That zone maps were the subject of discussion by the manufacturers is shown by the following memorandum, dated December 30th, 1936, from Mr. Macpherson to his competitors:

Enclosed please find map showing proposed zones in Ontario, Quebec and the Maritime Provinces.

We would suggest meeting in Toronto on Thursday, January 7th, 1937, to complete our discussion of this method of zoning.

(Exhibit 15, p. 16)

Mr. Macpherson's memorandum was acknowledged by C. S. Leary, of Canadian General Electric, on December 31st, 1936, (Exhibit 300, p. 2), and on the same day by T. A. Gass, of Canada Wire and Cable, who said:

Glad to note Mac's memo of the 30th instant with Map enclosed and assume all with arrange to attend at Toronto, on Thursday, January 7, 1937, at 10:00 a. m.

At this time we shall complete our discussion of this method of zoning and other items of interest.

(Exhibit 300, p. 1)

An exchange of the usual memoranda in November and December, 1937, shows how zone distributing points for purposes of zone list prices were arrived at. On November 20th, 1937, J. G. Smith, of Federal Wire and Cable, circulated the following memorandum:

> It has been drawn to our attention that our zone set up is consistent throughout our lines of wires and cables with the exception of A. B. C. and A. C. L.
>
> We are not interested in these items although some of our distributors are and we do not see any reason why these zones should not coincide. Is there any reason why on non-metallic sheathed cable the distributing points in Zone 1A should include North Bay, Sudbury, Sherbrooke and Quebec, and on A. B. C. and A. C. L. should include Halifax, St. John, Sherbrooke and Quebec? If there is, I should appreciate very much some enlightenment in the matter.
>
> (Exhibit 300, p. 6)

On November 22nd, 1937, C. S. Leary, of Canadian General Electric, replied by memorandum, as follows:

> Re Free-delivery Points
> Zones 1A and 2
>
> Referring to memo dated November, it is our feeling that it would be much better to have the same free-delivery points shown for each zone covering all products sold on that basis.
>
> We believe this is what S has in mind, and we concur with him.
>
> (Exhibit 300, p. 5)

On November 25th, 1937, P. A. Timmons, of Automatic, acknowledged the memoranda received from Messrs. Smith and Leary:

> Re Free Delivery Points
> Zone 1A and 2
>
> We have S. and L's memos regarding the above subject and agree that it would be much better to have the same delivery points shown for each zone covering all wire and cable sold on that basis.
>
> (Exhibit 300, p. 4)

On December 1st, 1937, K. P. Macpherson, of Northern Electric, replied to the three foregoing memoranda, as follows:

> Replying to S's memo of November 20th and L's acknowledgment of November 22nd, and T's acknowledgment of November 25th. When Zone Distributing points were originally established they represented the locations of jobbers' warehouses. They were divided firstly into groups serving the same competitive areas, and secondly, two or more groups having similar freight rates from manufacturing points were, for convenience, put into a zone. In that way New Liskeard and Kirkland Lake were grouped with St. John and Halifax, and Sault Ste. Marie in Zone 2.
>
> No special consideration of the import situation was necessary at that time. Since then the ABC group in the States set up a zone system and established a low price zone on the Eastern Seaboard and followed this with a number of price reductions making it necessary to put St. John and Halifax in a lower price zone, and they were moved from Zone 2 to Zone 1-A.
>
> Just a few days ago the States manufacturers of non-metallic sheathed cables adopted a similar plan and the same action will be necessary in the case of non-metallic sheathed cable. This change has not become necessary on rubber covered wires because those U. S. Manufacturers are still working on a single price anywhere in the United States. We consider it desirable to leave the zones on rubber covered wire alone for the time being until the present price controversy in the U. S. is cleaned up.
>
> (Exhibit 300, p. 3)

On the same day Mr. Macpherson circulated to the other manufacturers the following memorandum, to which he attached a list showing the seven zones, the free distributing points in each zone, and the prices applicable to each zone:

> Attached you will please find proposed revised prices and rearrangement of zones on non-metallic sheathed cable.
>
> This revision was necessary because of some drastic price reductions in the United States and the adoption of a zoning system for this product.
>
> (Exhibit 15, pp. 1 - 3)

Agreement at a local meeting of manufacturers on zone prices is shown by the following letter of June 15th, 1938, from A. M. Smith, of Canadian General Electric, Winnipeg, to Canadian Telephones and Supplies (Automatic Electric), Winnipeg:

To take advantage of the presence of Mr. T. Gass, of the Canada Wire and Cable Company, during his visit to Winnipeg, a meeting of Manufacturers of Armoured Wires and Cables was held, Tuesday, June 14th with the following in attendance:

Mr. T. Gass -
Canada Wire & Cable Company Ltd.
Mr. W. G. Vogan-
Canada Wire & Cable Company Ltd.
Mr. Lindsay -
Canadian Telephones & Supplies Ltd.
Mr. E. Lough -
Northern Electric Company Ltd.
Mr. W. J. Taylor -
Canadian General Electric Co. Ltd.
Mr. A. M. Smith -
Canadian General Electric Co. Ltd.

Zone prices - Geraldton, Ontario

To bring all resales into alignment it was agreed that Geraldton, Ontario, would be recognized as a zone three f. o. b. point for non-metallic cable, A. B. C. and A. C. L. Armoured Wires and Cable.

All other wire and cable products will be governed by the Manufacturers' ruling which reads:

Tonnage Material (Bare Copper, Weatherproof, Annunciator and Magnet Wire)
Use f. o. b. Toronto price and add map rate freight addition for map section N. Material now sold on a zone basis - Use f. o. b. Toronto price, plus actual freight rate to Geraldton.

By way of explanation, this ruling simply means that the f. o. b. Fort William and Port Arthur zone prices on rubber covered wires and cables do not apply in the Geraldton district and actual freight from the zone to destination must be added.

QUOTATIONS

For the benefit of all concerned it was decided to incorporate in these Minutes the agreement that provides that zone prices will be quoted and used on all quotations involving zone products and factory prices should not be mentioned unless specially asked for.

Saskatchewan

It was unanimously agreed that an effort should be made to create a resale for the Province of Saskatchewan which would

eliminate the present practice of pre-payment of transportation on all wire and cable shipments to points other than Regina and Saskatoon.

Messrs. Lough, Vogan and Taylor will take this under advisement and discuss it further with all interested parties.

(Exhibit 236, pp. 3 - 4)

T. A. Lindsay forwarded a copy of this letter to P. A. Timmons, of Automatic, on June 16th, 1938, and said:

For your information, we are attaching herewith a copy of a letter received to-day from the Canadian General Electric Company, which includes the minutes of a meeting of the representatives of the wire and cable companies in this district.

We understand that Mr. Gass of the Canada Wire & Cable Co. will take up the various points covered by these minutes on his return to Toronto, with the other wire and cable manufacturers.

(Exhibit 236, p. 2)

On July 27th, 1938, Mr. Timmons wrote to T. W. Brackinreid, of Phillips Electrical Works, as follows:

Referring to recent conversation, I am attaching herewith a map showing new proposed zones and the only change in the map is that Hull and Gatineau Power points adjacent thereto should be included in the blue zone, otherwise we would have Ottawa jobbers delivering to these points without freight added.

I will require seven of these maps to be submitted to the various manufacturers and I feel that this system will be adopted at our next meeting to be held some time in September.

Mr. Howard White secured the attached map for me and no doubt can secure more copies.

(Exhibit 237, p. 2)

On November 18th, 1938, C. S. Leary, of Canadian General Electric, circulated the following memorandum, to which were attached price sheets for heater cord sets:

Acknowledging G's memo of the 11th, our Mr. M. Graham, comments as follows:

The net dealer price, sales tax included, applies all over Canada.

The net jobber or manufacturer price is established f. o. b. Sault Ste. Marie and east, also west of Sault Ste. Marie. These prices are delivered to a jobber's warehouse or to a manufacturer's warehouse.

The wiring device group have always recognized that they will experience some competition from independent jobbers making their own heater cord sets, but apparently their experience has been that the competition does not affect them to any appreciable extent.

Attached is a revised price list giving the established prices for the two zones.

After you have had an opportunity of reviewing this, will all parties receiving a copy of this memo advise by November 24th, if they are agreeable to adopting this resale effective November 28th.

(Exhibit 324, p. 5)

The prices suggested by Mr. Leary having been agreed upon, he advised on December 7th, 1938, as follows:

Mr. Graham informs me that at an industry meeting yesterday, it was decided to adopt the prices attached to my memo of November 18th and make them effective December 8th.

In view of the replies received, I take it for granted that these prices are acceptable to the parties receiving a copy of this letter, and that you will quote similar prices when called upon to do so.

(Exhibit 324, p. 8)

Failure on the part of a company to adhere to the manufacturers' agreements or arrangements on delivered prices was a cause for complaint. On October 29th, 1948, J. H. Fitzgerald, of Phillips Electrical, sent the following memorandum to Canada Wire and Cable, Northern Electric and Canadian General Electric with respect to a quotation to International Nickel:

On September 21st we quoted, through our agent, for the above on a quantity of 78,000 ft. each of 1 and 2/0 hard drawn bare copper cable, at the regular prices including map rate freight to Sudbury.

We have been recently advised that this business was placed on the basis of the f. o. b. Toronto prices with freight either pre-paid and charged or collect.

Taking into consideration the gross weight of material shipped on reels, the saving to the customer would be not more than ten to fifteen dollars on a total value of around $18,000.00, nevertheless it was apparently sufficient to obtain the order.

If this is the way we are going to quote on these inquiries, we would certainly like to know about it, but we can see no value in Mac's suggestion on advancing the shipping weights to calculate map rate freights for material shipped on reels, if we are going to quote on this basis.

We do not know who received the order but presume it was one of the parties to whom this memo is addressed and we would appreciate receiving your comments.

(Exhibit 230)

On November 29th, 1949, S. H. R. Clish, of Northern Electric, wrote to C. E. Woolgar and K. P. Macpherson, of the same company, with respect to "freight additions to weatherproof and bare copper", as follows:

It was agreed sometime ago by all concerned that Tonnage Material would be shown on Price Cards as F.O.B. Montreal, Toronto, Hamilton, Brockville, St. Johns Quebec, Guelph and Peterboro, and that the Map Freight Rate would be shown separately so that if the 10% were allowed to an electrical wholesaler there would be no possibility of this 10% being deducted from the freight component. . . .

(Exhibit 66)

The f.o.b. points listed by Mr. Clish in this memorandum are the points at which the various wire and cable manufacturing plants were located. In connection with this exhibit, Mr. Macpherson said:

A. The memorandum was written by the manager of our pricing department, Mr. Clish. His initials appear. The letter is addressed to Mr. Woolgar and myself, so we must have read it. It is an internal memorandum.

Q. The first sentence of the memorandum says:

> "It was agreed some time ago by all concerned that tonnage material would be shown on price cards as f.o.b. Montreal, Toronto, Hamilton, Brockville, St. Johns, Quebec, Guelph and Peterborough."

A. As I explained to you on Monday, if we were going to meet competition at any place where the competitors had their manufacturing establishment, we had to have the same

freight rate there as they did or we would not sell anything and they are points where the manufacturers have their manufacturing establishments.

Q. Who is it referring to when it says: "It was agreed some time ago by all concerned"?

A. I suppose that meant the industry.

Q. You say that was an internal memorandum from Mr. Clish to you and Mr. Woolgar?

A. That is correct.

Q. You say you suppose it meant the industry; don't you know who it means?

A. This sort of thing had been going on before 1949. We had to meet competition in those things any time an inquiry came up.

Q. Surely you know who is meant by "all concerned"?

A. It means the industry, as far as I know.

Q. And that is what you took it to mean?

A. That is what I took it to mean.

(Evidence, pp. 177-178)

On March 20th, 1951, V. N. Longtin, of Cables, Conduits and Fittings, circulated the following memorandum to the other manufacturers:

Re City of Winnipeg Hydro

The above customer is questioning our policy of charging freight on gross weight of shipments. They claim they can purchase material with the understanding that no freight will be charged on the weight of the reel when shipped with the material, and they will return the empty reels prepaid to the factory. This gives them the advantage of the difference in rates between that charged for material and empty reels' rate.

As we feel this is contrary to our price set-up, we would appreciate having comments and if we are in error would appreciate if this could be clarified.

(Exhibit 71)

On March 27th, 1951, J. G. Smith, of Federal Wire and Cable, replied to the foregoing, as follows:

When quoting or billing the above Hydro, it is our policy to charge freight according to the shipping weights as listed in the price set-up. These weights do not always work out to be the exact gross weight but are usually within reason.

It is our opinion that we should continue the practice of using the shipping weights when billing.

(Exhibit 172)

It follows from Mr. Smith's memorandum that in computing freight charges the manufacturers did not necessarily have regard to actual weights of wire and cable products but "to the shipping weights as listed in the price set-up".

In his evidence on Exhibit 71, Mr. Longtin said:

Q. Is it a uniform practice or procedure with all manufacturers in regard to charging freight on the reels?

A. That is right.

Q. Is that what it refers to?

A. Freight on reels as agreed on.

Q. That is what it refers to, isn't it? Is that not correct? It was the manufacturers' arrangement with regard to freight on reels?

A. I would say it is.

Q. That is what you are referring to?

A. Yes.

Q. That is a memo you write asking for comments regarding a query raised by a customer?

A. Yes.

(Evidence, p. 909)

On the same point, Miss R. Martell, of Cables, Conduits and Fittings, said:

Q. Refer to the second paragraph of this exhibit where you said, "As we feel this is contrary to our price set-up, you will find . . ." Will you explain "contrary to our price set-up"?

A. Yes, we have a set-up whereby we charge certain freight rates on the gross weight of the material according to our price set-up.

Q. "Our price set-up" -- prices of C. C. F. or wire and cable industry?

A. Wire and cable industry, as far as I know.

Q. You all have the same practice? Is it because you all have the same practice with regard to charging freight?

A. Yes.

Q. That is what you were referring to here?

A. Yes.

Q. Has this practice of all manufacturers handling freight on reels been standard over a long period of time, or something recently come in?

A. I can't remember exactly when it started. It is over a period of the last few years.

Q. But in any case to your knowledge, all manufacturers are on the same arrangement?

A. To my knowledge, yes.

(Evidence, pp. 998-999)

Freight charges continued to be the subject of discussion and agreement among the wire and cable manufacturers in 1952. A memorandum found in the files of Northern Electric reads as follows:

MAP FREIGHT RATES

February 18, 1952.

Tonnage Material Sheets show:-

F. O. B. Montreal, Toronto, Hamilton, St. John, Brockville, Peterboro, Guelph.

Some Footage show:-

F. O. B. Montreal, Toronto and Hamilton
Others show:-
F. O. B. Montreal, Toronto, Hamilton, Brockville.

Others show:-
F. O. B. Montreal, Toronto, Hamilton, Brockville, Peterboro.
Others show:-
Montreal and Toronto.

Suggest leaving Map Rates as is but to change all Footage sheets at first opportunity to:-

F. O. B. Montreal, Toronto, Hamilton, Brockville, Peterboro, St. Johns, Guelph, to be the same as Tonnage.

Zone Footage prices - No change.

(Exhibit 120)

In his evidence, D. C. Borden, of Northern Electric, said:

Q. My understanding is correct that the map freight rates for all the manufacturers are the same, that is, you use the same figures?

A. Yes, I think that is correct. These map rates only apply to certain products.

Q. They do not apply even to your zones; you have your zone list price?

A. Yes.

Q. Then you have some other products and it is F. O. B. and you have map freight rates?

A. Where map rates apply zone rates do not. That is the size of it.

Q. Is it not also correct that the effect of the map freight rates means that regardless of where the shipment originates the delivered price to the consumer will be the same for any of the manufacturers?

A. I think that is correct.

Q. And the only way you can have that coming out the same for all the manufacturers is by having an agreement between them to use the same map freight rates; is that correct?

A. I can't see any other way.

(Evidence, p. 470)

Further evidence that shipping weights used in computing freight charges on shipments to customers at other than prepaid points were the subject of discussion and agreement among the manufacturers appears in a memorandum of March 28th, 1952, circulated by Northern Electric, which reads as follows:

> We are forwarding herewith the attached list of revised shipping weights for your consideration.
>
> If all are in agreement we plan to publish these weights and at the same time revise the prices for these cables based on new Zone freight adders which we have set up to incorporate the recent increases in Freight rates.
>
> If we do not hear anything to the contrary we plan to release revised price sheets as soon after April 7th as possible.
>
> (Exhibit 124, p. 1)

Attached to Exhibit 124 are proposed shipping weights on cab tire cable, power supply and portable cable. Examined on this exhibit, Mr. Borden said:

MR. HUNTER: Q. Would you explain what the subject matter is?

A. Again it is a case of attempting uniformity in technical information. These things are all built to C. S. A. specifications and within a very small percentage they weigh the same regardless of who makes them. It does not always show the actual weight and way of establishing what these weights are on which freight rates are paid. The human error comes up again when it is done by different people. In this same effort to have a similar starting point for price negotiations it is very desirable to have the same weights used by everybody so this is a proposal that these weights be accepted.

(Evidence, p. 481)

G. W. Arnold, of Boston Insulated Wire and Cable, said:

Q. Mr. Arnold, I show you Exhibit No. 124, dated March 28, 1952, and the reference is, "Proposed shipping weights". Do you recall this subject or information on this subject being exchanged between manufacturers?

A. I recall there was a discussion of it.

Q. Do you remember seeing a copy of this document or receiving a copy of this document?

A. Yes, I think I received a copy of that document.

Q. Is that an instance which you have mentioned before in connection with the freight adders?

A. I imagine it would be.

Q. Are the freight adders the same for all the manufacturers for inclusion in their list prices?

A. Yes, and they are the same for both railway companies.

Q. By that are you saying that the freight adders which appear in your list prices indicate what the railway charges to manufacturers are?

A. No, not necessarily.

Q. I understand it is not so.

A. That is not so. It has some bearing on it but that is not so.

(Evidence, pp. 1323-1324)

The evidence on freight charges and delivered prices establishes agreements or arrangements among the companies on these matters pursuant to their basic policy of eliminating price competition. This was confirmed by the testimony of various witnesses:

V. N. Longtin, of Cables, Conduits and Fittings:

Q. In any case all manufacturers use the same zones?

A. As far as I know.

Q. What about map freight rates. Is there uniformity as between manufacturers between map freight rates?

A. That is right.

Q. And is my understanding correct, that the effect of zones and zone prices, and map freight rates, are the result of those; that the same product originating from any of the manufacturers delivered to the same distance, will all have the same price because the freight is included in the price?

A. Yes.

Q. And am I correct in my understanding that the purpose of having zones is so that everyone's product arrives at its destination with the same freight additions?

A. Yes.

(Evidence, p. 890)

J. H. Fitzgerald, of Phillips Electrical Works:

Q. What about the question of map freight rates; is that a subject which has been discussed at meetings of the representatives of the manufacturers at which you have attended?

A. Yes, it has.

Q. Has there been an agreement by those attending the meeting as to either the adoption or variation of map freight rates from time to time?

A. Yes, I believe the formula was established on a base of freight rates.

Q. You all use the same formula?

A. Yes.

Q. I mean the manufacturers?

A. Yes.

Q. I understand in the wire and cable industry there is a zoning, various areas are zoned out?

A. Yes.

Q. And in a zone area the product is sold on a delivery price?

A. Yes.

Q. Are those zone areas the same for each of the manufacturers?

A. Yes.

Q. Has that matter ever been discussed, either the original zoning or a variation of these zones?

A. Yes.

Q. There has been an agreement in any variation of that zoning?

A. Yes.

Q. All the manufacturers have agreed to change the zones at the same time and you all abide by these changes?

A. Yes.

(Evidence, pp. 608-609)

W. R. Greenshields, of Triangle Conduit and Cable:

Q. Again, as increases would be required, would there be uniformity as between manufacturers in increases in zone list prices?

A. Yes.

Q. And the same object and purpose, I suppose, would apply for that as it did for some of these other matters, that is, to continue to achieve uniformity?

A. That is right.

(Evidence, p. 1378)

J. H. Pryce, of Canada Wire and Cable:

Q. Have you been present at any meetings when zone list prices or changes in zone list prices have come up for consideration?

A. Yes.

Q. As a result of the discussions which have taken place at any of these meetings have there been changes subsequently made in zone list prices?

A. Yes.

Q. Was that by agreement or arrangement of those present at the meeting?

A. Yes.

(Evidence, pp. 1803-1804)

4. Other Matters

The evidence shows that the wire and cable manufacturers have exchanged information on various other matters affecting prices to the customer, and that with respect to some of these matters agreements or arrangements have also been reached. There were discussions, for example, with respect to uniform charges for the reels and spools used in shipping wire and cable products.

It appears from the evidence that while some of the companies sold the reels to the customer and later repurchased them, others charged a deposit on the reels and returned the deposit when the reels were returned. The policy with respect to reel charges was discussed by memoranda and at meetings.

In a memorandum dated December 28th, 1948, and circulated to the other companies in the usual way, T. A. Gass, of Canada Wire and Cable, advised as follows:

> For your information we attach hereto schedule of Reel prices that we will adopt effective January 3, 1948, which we believe to be in line with suggestions I have already made and also in line with the current prices for 1948 of other Companies.
>
> We have run into several snags that possibly other Companies have also come up against, as for instance, Enamel Magnet Wire that is now packed in cases ready for shipment, as well as stocks in our Branch Offices, and as it would be a pretty costly proposition to unpack these spools and identify them, we have decided material already packed for shipment on reels and spools that may be shipped out after the first of the year, will be charged for the reels at the old prices which are already stamped on the reels and packages. We see no other method of handling this stock material, but can assure you that all material manufactured after January 3rd and spooled, the reels will be identified and charged at the new prices.
>
> The reason we mention this is that you may even for a few months find some of our material shipped out on spools that are charged at the old price, but we are quite sure you will appreciate the reason for same, as outlined above.

(Exhibit 316)

A circulating memorandum, from the files of Northern Electric, dated July 16th, 1951, reads as follows:

> Reels
>
> We are currently using prices in billing out reels and spools which became effective January 3, 1949. Since then costs have increased considerably and we find in a number of cases we are supplying these reels and spools at prices below our actual cost.
>
> We were wondering if the other manufacturers are experiencing the same thing and if they have any suggestions as to probable basis of increasing the current listings. Please advise.

(Exhibit 127, p. 2)

A memorandum of July 17th, 1951, indicates that the subject of reel charges was discussed at a meeting at the Caledon Trout Club:

> Re Reels
>
> Reference - L's memo of July 16th.

This subject was mentioned briefly recently at Caledon and was investigated by us after our return.

As far as we are concerned, the prices charged for reels are still satisfactory.

We will, however, be very shortly putting forward a proposition with regard to change of terms on reels. This is necessitated by certain rulings made by the Income Tax Branch of the Canadian Government and we will be writing or talking to you further about this immediately after vacation shut down.

(Exhibit 127, p. 3)

On July 27th, 1951, V. N. Longtin, of Conduits, Cables and Fittings, circulated the following memorandum:

In reply to the memo of July 20th, we have checked our records on cost of reels against the selling price, and would suggest an increase in price on the 30' size. At the present time, our selling price on this reel is $14.00, and our suggestion would be that it would be increased to read $16.00.

(Exhibit 127, p. 4)

Although the companies may not have followed a uniform policy on reel charges, the effect on prices was the same. D. C. Borden, of Northern Electric, said, with reference to Exhibit 127:

Q. I take it that there was a discussion in the industry on or about the time that these various memoranda are dated with regard to the price to be charged for reels or the method of charging for reels?

A. There was.

Q. And there were certain changes made as a result of these various discussions?

A. Yes.

Q. There were certain changes made either to the prices or the terms of payment for reels?

A. There was no general change made. I cannot answer that directly but I can tell you what happened; that the Phillips Company became convinced that their method of charging for reels was not the best from an income tax point of view. . .

MR. HUNTER: Q. The point that I would like to be informed on, Mr. Borden, is whether there was a uniform policy or whether there is a difference between the manufacturers in method in the way charges are made for reels?

A. There is not a uniform policy. There was but Phillips Company's lawyers advised them to change it. I know what Phillips' is and I know what ours is.

Q. The fact that the policy is not uniform does not influence the price to the customer?

A. I think the prices are all the same. They are refunded, anyway.

Q. So if there is any difference in the charges of reels it does not affect the cost to the customer?

A. No, he can get the money back.

(Evidence, pp. 505-506)

For about three years after the termination of the Second World War the wire and cable manufacturers accepted orders at "prices prevailing at date of shipment" because this was the basis on which they were purchasing copper and lead from their suppliers. Under pressure from the trade they began, in 1949, to discuss a return to a firm price basis with a view to adoption of a uniform practice, in conformity with the underlying policy of price uniformity.

In a memorandum of February 25th, 1949, with "copies to all interested parties", T. A. Gass, of Canada Wire and Cable, said;

I would like to suggest, after looking over the agenda of the meeting on March 2nd, that the following should be thoroughly discussed and we should all come prepared to discuss same:

. . .

(c) The matter of firm prices vs prices prevailing at date of shipment

. . .

In connection with letter c above, there seems to be a growing demand from the trade that firm prices should be re-instituted on certain commodities - some now purchased on a firm basis although others are still sold and can only be purchased on the basis of prices prevailing at date of shipment. The writer suggests that each one roughly check some of these items so that we can consider the pros and cons of this policy, not possibly for immediate action but for action in the not too distant future.

(Exhibit 62)

On August 23rd, 1949, Mr. Gass circulated another memorandum on the same subject, as follows:

> Referring to F's memo of the 22nd and various conversations in connection with Lead Covered Power Cable, we have discussed this matter with our executive and believe that Power Cable can definitely be sold on a firm price basis effective same date as the other copper wire products and that the Telephone Cable is a matter only for two Companies to consider and should not have any bearing on the Power Cable situation.
>
> We can buy lead firm for delivery within three months and our suggestion, which we submit for your consideration, is that all normal inquiries for Lead Covered Power Cable should be quoted firm prices if for delivery within four months from date of order, and another yardstick of having a value not in excess of $50,000.00.
>
> We see no reason why we could not immediately adopt a policy covering Power Cable sales, as outlined above, but agree that on large inquiries for future delivery - possibly even as has happened in the past, for delivery over a period of a year - that those individual inquiries should be considered on their own merits and discussed and settled at the time of tendering, but that to avoid confusion and frequent discussions, the simplest method would be to follow the policy outlined in our suggestion above.
>
> We would request that you give this matter very careful consideration and let us have your comments at your earliest convenience.
>
> (Exhibit 65)

The matter of returning to a firm price basis was discussed at meetings of manufacturers' representatives and as a result of such discussions the companies adopted a uniform policy in this regard. (Evidence, pp. 646-647, 897, 1778). Circulars to their customers from Canada Wire and Cable, Automatic Electric, and Cables, Conduits and Fittings advised that effective September 15th, 1949, all orders for copper wire products, with the exception of certain items, would be accepted on a firm price basis and would be billed at prices prevailing at the date of the order. (Exhibits 372, 167, 265). In a memorandum dated September 15th, 1949, Canada Wire and Cable amended its circular letter, which had varied somewhat from the others, "in order that our practice will correspond with that of other manufacturers". (Exhibit 373).

When it was suggested by a customer that there was some deviation from the new policy on firm prices, Mr. Longtin, of Cables, Conduits and Fittings, circulated the following memorandum to the other manufacturers on March 20th, 1951:

> We have had a complaint from one of our Power Company customers because we are charging them on the basis of "price

in effect at time of shipment" basis on Service Entrance Cable. They claim that they are able to buy on a "firm price" basis on this line.

We would appreciate comments from the different parties as to the procedure which is adopted, that is as from the time when wholesalers' items were placed on a "price in effect at time of shipment" basis.

As we would like to clear this matter up as soon as possible, your reply would be appreciated.

(Exhibit 70)

On March 27th, 1951, J. G. Smith, of Federal Wire and Cable, replied as follows:

. . .

This is to advise that we have considered Service Entrance Cable as a tonnage item, not a wholesalers' item, and have therefore not quoted "prices in effect at time of shipment".

(Exhibit 172)

It follows from the evidence that the basic policy of fixing a common price for wire and cable products and thereby preventing or lessening competition in the wire and cable industry has resulted in agreements or arrangements not only on prices but also on the various terms and conditions of sale which might affect prices. These subsidiary agreements or arrangements have formed an integral part of the overall plan to eliminate price competition. That few details were overlooked is shown by the following memorandum of March 21st, 1940, circulated to the other manufacturers by V. N. Longtin, of Cables, Conduits and Fittings:

Commenting on G's memo of the 19th, it has always been the policy of our company when determining a selling price to consider the third decimal place.

Taking the example cited in the third paragraph, i.e. $9.50 per Mft. less 5%, we would quote $9.02 per Mft., allowing a reduction of 48¢, and likewise for the tax deduction we would allow a deduction of 67¢, making a net figure of $8.35 per Mft.

So far as our company is concerned, we would prefer to continue on this basis because it is generally understood that this is the procedure to be followed and consequently all of the comptometer operators have been instructed accordingly.

You can appreciate that for us to adopt a different policy for wire and cable would tend to complicate matters, and there is always the possibility that the arrangements will be lost sight of. Consequently our quotation would be high.

(Exhibit 324, p. 20)

Writing also in connection with the "third decimal point", T. A. Gass, on March 29th, 1940, circulated the following memorandum:

In connection with the practice of adding or deducting from prices, various percentages referred to in recent correspondence, my understanding is, after a careful review of the correspondence, that in either adding or deducting if a third decimal point is 5 or over it is taken into consideration as the next highest cent, if it is under 5 that it is taken into consideration as the next lowest cent.

In other words, if the cents work out to decimal 6683 you would deduct or add 67¢ but if the decimal is worked out to 6633 you would add or deduct 60¢.

This is a point that I wanted cleared up as the illustrations in the price book are all where the decimal point is 5 or higher.

(Exhibit 348, p. 11)

In the course of his examination on the effects of the overall policy of interference with price competition, D. C. Borden, of Northern Electric, said:

Q. You think that this type of interference is in the best interests of the consumer?

A. It is so long as a strong element of competition exists which does in the market for wire and cable. You see what I have to say; all these things that we have been talking about do not work. If they worked 100% I suppose some one would attempt to use these for a purpose that Mr. Goldenberg has referred to. If this worked 100% and everybody obeyed these sheets that we sent out, but it is a recognized fact, in my opinion, that it only works about 75 to 80% and that in that 25% of cases where it does not work is where competition comes in and keeps the thing on the track as legitimate supply and demand.

Q. By that do you mean that you are limiting competition to 25%?

A. No, I do not think that mathematics hold. I mean all of these businesses do not produce uniform selling prices because salesmen give little discounts and customers are pretty good bargainers and all sorts of things happen that do not appear in this plan.

(Evidence, p. 498)

V. CONCLUSIONS

The present inquiry into an alleged combine in the manufacture, distribution and sale of electrical wire and cable products has been concerned with the operations and activities of the following wire and cable companies:

- Northern Electric Company, Limited
- Phillips Electrical Works Limited
- Automatic Electric (Canada) Limited
- Canada Wire and Cable Company, Limited
- Canadian General Electric Company, Limited
- Cables, Conduits and Fittings, Limited
- Federal Wire and Cable Company, Limited
- Triangle Conduit and Cable (Canada) Limited
- Boston Insulated Wire and Cable Co. Limited
- Industrial Wire and Cable Limited

With the exception of Automatic Electric, which has been solely the selling organization of Phillips Electrical Works, all of the foregoing companies are wire and cable manufacturers. Northern Electric, Phillips Electrical Works, Canada Wire and Cable, and Canadian General Electric manufacture a complete line of products and may be described as the "Big Four" of the industry. Cables, Conduits and Fittings and Federal Wire and Cable manufacture a fairly wide but not a complete range, while Triangle Conduit and Cable, Boston Insulated Wire, and Industrial Wire and Cable produce relatively more restricted lines.

The nine manufacturing companies produce more than 90 per cent of the total value of production of the industry in Canada, the "Big Four" companies alone producing between 75 and 80 per cent of the total value. If aluminum wires and cables produced by other manufacturers are excluded, the nine companies manufactured more than 99 per cent of the total value of wire and cable products in each of the years from 1948 to 1951. Imports, as a percentage of the total value produced in Canada, have been relatively small in each of the years from 1937 to 1951.

The evidence relating to the operations and activities of the ten companies establishes that:

1. The nine manufacturing companies constitute substantially the entire industry engaged in manufacturing copper wire and cable products in Canada.

2. The wire and cable companies operate independently and compete for the sale of their products, but, in relation to the determination of selling prices and terms and conditions of sale affecting prices, their operations have been governed by common policies and practices which have been pursued by agreement or arrangement in the industry over a period of many years.

3. The companies by concerted action have entered into

(a) agreements or arrangements fixing common prices;

(b) agreements or arrangements on methods for computing prices and effecting adjustments in prices from time to time which had or were designed to have the effect of fixing common prices;

(c) agreements or arrangements fixing the effective dates of agreed price adjustments and varying the effective dates for the different companies, which variation was designed to disguise the fact of concerted action on such price adjustments;

(d) agreements or arrangements to submit uniform bids on tenders;

(e) agreements or arrangements on a uniform classification of customers, on uniform trade discounts for each class of customer, and on uniform cash discounts;

(f) agreements or arrangements on the appointment and location of agents;

(g) agreements or arrangements on uniform freight charges and uniform zone prices and on methods for computing freight charges which had or were designed to have the effect of fixing common delivered prices.

4. These agreements and arrangements were integral parts of an over-all scheme to prevent or to lessen competition in the sale of wire and cable products by the companies, which, acting in concert, constituted in effect the entire industry manufacturing such products in Canada.

5. The agreements and arrangements to prevent or lessen price competition by fixing common prices and common terms and conditions of sale had the effect generally and were designed to have the effect of preventing price reductions or variations from the common prices and common terms and conditions of sale by individual companies acting independently.

6. The form of the memoranda circulated by and among the companies for the purpose of exchanging information in order to arrive at or to give effect to agreements and arrangements and the mechanics for the distribution of the memoranda show a studied effort to conceal such activities, while the composition of power cable price books in effect until late in 1951 shows a calculated attempt to disguise the fact that the net prices in each company's book were identical.

The Combines Investigation Act (1952 R.S.C. cap. 314) defines a combine as follows:

2. In this Act, unless the context otherwise requires,

(1) "Combine" means a combination having relation to any commodity which may be the subject of trade or commerce, of

two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of

(a) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing, or

(b) preventing, limiting or lessening manufacture or production, or

(c) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or

(d) enhancing the price, rental or cost of article, rental, storage or transportation, or

(e) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply, or

(f) otherwise restraining or injuring trade or commerce;

or a merger, trust or monopoly, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others.

It is important to note that the law seeks to protect "the interest of the public, whether consumers, producers or others". Agreements or arrangements to prevent or lessen competition may operate to the public detriment whether they affect products which are sold to the public directly or indirectly and whether such products are producers' goods or consumers' goods.

Section 498 (d) of the Criminal Code makes it an indictable offence to conspire, combine, agree or arrange with another person "to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, transportation or supply" of any article or commodity which may be a subject of trade or commerce.

It was submitted by counsel for the companies that, in the absence of proof of binding agreements and of sanctions for their enforcement, the evidence failed to establish agreements or arrangements in violation of the law. This argument must be rejected. The evidence establishes the fact of agreement which, if the agreement has operated or is likely to operate to the detriment of the public, may alone constitute the offence. It is not necessary that sanctions be provided. Nor is proof of an agreement rebutted by evidence that the agreement has at times been violated by one or more of the parties. In the present instance the evidence not only establishes the fact that agreements and arrangements were made but that they were operative

and, as a general rule, effected the end which they were designed to effect, that is, to prevent or lessen competition by fixing common prices.

It was submitted that uniform prices for wire and cable products resulted from the operation of price leadership; that for each product the companies merely followed the prices and pricing policies of the company which was pre-eminent in the manufacture of such product. This argument is contradicted by the evidence. "Price leadership", in the accepted sense of the term, assumes that other companies independently follow the prices set by the leader after such prices have been announced. While the evidence in the present case shows that the prices suggested from time to time by the leader or leaders were an important influence in determining the uniform prices adopted and announced by each of the companies, it also establishes the fact that such uniform prices were adopted by prior agreement or arrangement; that if the price suggested by the leading company was in fact frequently adopted, it was not the result of the operation of price leadership but of the prior agreement or arrangement among the companies to adopt the price. The suggestion that price leadership operated and that the meetings and discussions on prices were an innocent means of exchanging price data or of bargaining between buyers and sellers scarcely fits the calculated efforts to conceal and to disguise the concerted action on prices and related matters disclosed by the evidence.

That the industry sought to eliminate price competition and that to this end it aimed at uniform prices and uniform terms and conditions of sale was admitted in evidence by officials of each of the companies and justified by them in terms of the public interest and the interest of the industry. It was submitted more particularly that:

1. Uniform prices are a necessary consequence of the high degree of standardization of wire and cable products. The standards set in the interests of public safety by the Canadian Standards Association and embodied in the Canadian Electrical Code, which is the basis of electrical approval and inspection in all the provinces and has the force of law in most provinces, impose rigid controls as to specifications and quality of product. The consequent similarity of the products and the high proportion of their cost which is represented by raw materials, the price of which is the same for all companies and uninfluenced by them, tend towards the establishment of uniform prices.

2. Price uniformity has operated in the public interest because the prices adopted by the industry have been determined by the lowest-cost producers. Accordingly, from time to time, some companies have had to cease manufacturing certain products because their costs of production were too high as compared with the costs of the most efficient producer. The prices charged were reasonable and the profits of the companies were at no time exorbitant.

3. Price uniformity has operated in the public interest by promoting "orderly marketing" and stability of the industry and has prevented "cut-throat competition".

4. While price competition has been prevented or lessened by uniform prices, and quality competition has in effect been eliminated by the high degree of standardization of product, the public has not been deprived of competition based on salesmanship and service, including delivery, the maintenance of adequate stocks, and the provision of technical information and assistance. The customer has, therefore, not been deprived of his choice of supplier. No controls over manufacturing or production were imposed; markets were not divided or allocated; new competitors were not excluded from the industry; no restrictions were imposed on the improvement of products or the introduction of new products by any company at the expense of competitive products of other companies.

5. Identical bids on tenders have operated in the public interest in that the prices quoted have been those of the lowest-cost producer, and the customers in any event have preferred uniform bids.

Counsel for the companies have accordingly submitted in argument that the policies and practices of the companies have not operated and are not likely to operate "to the detriment or against the interest of the public" within the meaning of the Combines Investigation Act; that not all agreements or arrangements which prevent or lessen competition fall within the operation of the statute but only agreements or arrangements which prevent or lessen competition to the detriment of the public or "unduly" as in the wording of Section 498 (d) of the Criminal Code; and, that in order to prove the existence of a combine within the meaning of the Act the evidence must prove public detriment or an undue prevention or lessening of competition, which, it is submitted, it has not proved in the present inquiry.

In appraising the effect on the public interest of the agreements, arrangements and practices disclosed by the evidence, it is basic to note that, in Section 498 of the Criminal Code and in the Combines Investigation Act, Parliament has enacted laws to protect the public interest in competition by making it illegal to prevent or lessen competition unduly or to the public detriment. In Container Materials Limited et al v. The King, 1942 S. C. R. at p. 152, referring to Section 498 of the Criminal Code, Duff, C. J., said:

> The enactment before us, I have no doubt, was passed for the protection of the specific public interest in free competition. That, in effect, I think, is the view expressed in Weidman v. Shragge in the judgments of the learned Chief Justice, of Mr. Justice Idington and Mr. Justice Anglin, as well as by myself. This protection is afforded by stamping with illegality agreements which, when carried into effect, prevent or lessen competition unduly and making such agreements punishable offences; and, as the enactment is aimed at protecting the public interest in free competition, it is from that point of view that the question must be considered whether or not the prevention or lessening agreed upon will be undue. Speaking broadly, the legislation is not

aimed at protecting one party to the agreement against stipulations which may be oppressive and unfair as between him and the others; it is aimed at protecting the public interest in free competition . . .

The lessening or prevention agreed upon will, in my opinion, be undue, within the meaning of the statute, if, when carried into effect, it will prejudice the public interest in free competition to a degree that the tribunal of fact finds to be undue, and an agreement to prevent or lessen competition to such an extent is, accordingly, an offence against sec. 498 (d).

The prevention or lessening of competition agreed upon is not undue if, when the agreement is implemented, competition remains effective; it is effective competition which the law seeks to preserve in the public interest. Effective competition operates generally when buyers are offered a real choice of alternatives in dealing with one or more of a number of sellers: its principal elements are, broadly speaking, (a) price, (b) quality, (c) service, and (d) salesmanship, and of these, price and quality are paramount. While it is true that prices may be levelled by competition as well as by agreement or arrangement, the effect will assuredly be different if the price is determined by competition and not by agreement. It is in the light of these considerations that the effects of the agreements, arrangements and practices to prevent or lessen competition in the wire and cable industry must be appraised.

With respect to price, the evidence discloses that the wire and cable companies have agreed or arranged to eliminate it completely as a competitive factor by fixing common prices and agreeing on uniform tenders, uniform freight charges and delivered prices, uniform discounts, and other uniform terms and conditions of sale. The agreements or arrangements were designed to have and, as a general rule, had the effect of fixing exactly the same price to the same customer for all companies manufacturing the product.

It was submitted that the products are to a large degree standardized in the interests of public safety and that standardization tends towards price uniformity. The evidence shows that the Canadian Electrical Code, formulated by the Canadian Standards Association, prescribes rigid minimum specifications and that these must be adhered to; it does not show that the Code prescribes maximum specifications or that it also standardizes the methods of manufacture, the speed of machines, the wastage of materials or other factors which lead to variations in the operating efficiency and in the costs of different manufacturers. Nor does it show that all products are standardized to the same degree; the argument on standardization does not apply equally, for example, to standard footage materials produced and stocked by nearly all the companies and to special and complicated products manufactured to the detailed specifications of a particular customer. These variations in operating efficiency and costs and in the degree of standardization would under conditions of effective competition allow for variations in price and in other factors which enter into such

competition. If the conditions of manufacturing are in fact such as tend to lessen price competition, it is contrary to the public interest for the producers acting in concert to agree or to arrange to limit further or to eliminate completely the competition which might otherwise exist.

It was argued that price uniformity has operated in the public interest because the prices adopted were determined by the costs of the most efficient producer. The evidence shows some instances where the prices fixed apparently did not protect the highest-cost producers. However, it also shows many instances of price adjustments by concerted action based solely on the laid-down prices of imports from the United States and not on the costs of manufacturing in Canada. Furthermore, witnesses who testified to price discussions at meetings said that costs were not discussed. If the costs of the lowest-cost producer always determined prices, there would seem to be little reason for the meetings, discussions, agreements and arrangements on common prices.

With respect to the argument that the prices charged were reasonable and that the profits of the companies were not exorbitant, the courts have refused to test the validity of agreements by the reasonableness of the prices fixed by the parties; they have declared that the public is entitled to prices which are regulated by competition. Furthermore, there is no yardstick for measuring the reasonableness of prices over a period of time. As was pointed out in United States v. Trenton Potteries, Co., 273 U.S., p. 392, by the Supreme Court of the United States:

> The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow. Once established, it may be maintained unchanged because of the absence of competition secured by the agreement for a price reasonable when fixed. Agreements which create such potential power may well be held to be in themselves unreasonable or unlawful restraints, without the necessity of minute inquiry whether a particular price is reasonable or unreasonable as fixed and without placing on the Government in enforcing the Sherman Law the burden of ascertaining from day to day whether it has become unreasonable through the mere variation of economic conditions.

On the same point Laliberté, J., in Rex v. Canadian Import Co. et al, (1933) 61 C.C.C. at p. 161, said:

> I feel bound, however, to follow the principles laid down in Weidman v. Shragge; Stinson-Reeb v. The King; U.S. v. Trenton Potteries and Rex v. Alexander Ltd., and to rule that it is not necessarily the duty of the Court to inquire into and regulate prices that may change from day to day. It is rather the duty of the Court to look into the nature of the agreement itself and to see whether it interferes with the free course of

trade, or in other words, "What the thing was in essence that the defendants were seeking to accomplish".

It was argued that price uniformity has operated in the public interest and in the interest of the industry by promoting "orderly marketing" and stability in the industry. The evidence establishes that "orderly marketing" was achieved by agreements or arrangements to eliminate price competition among the companies in Canada, which agreements or arrangements had particular regard to the laid-down prices in Canada of competitive American products. These agreements, arrangements and practices had and were designed to have the effect of imposing undue limitations on the alternatives which should be available to the buyer under effective competition. If the "orderly marketing" achieved by these means served the business interests of the companies, it was at the expense of the public interest in effective competition. As was pointed out by Mignault, J., in Stinson-Reeb Builders Supply Co. et al v. The King, 1929 S. C. R. at p. 280:

> . . . Injury to the public by the hindering or suppression of free competition, notwithstanding any advantage which may accrue to the business interests of the members of the combine, is what brings an agreement or a combination under the ban of section 498 Cr. C.

The argument that agreements or arrangements to submit uniform bids on tenders have been in the public interest because the prices quoted have been those of the lowest-cost producer and the buyers have preferred uniform bids cannot be sustained. By agreeing and arranging to submit and by submitting identical bids on tenders the wire and cable companies have vitiated and made a mockery of the system of competitive bidding which has long been established for the express purpose of protecting the public interest. That government departments, municipalities, public utilities and other buyers who call for tenders favour uniform bids is not proven; the evidence, in fact, is to the contrary. The submission that such bids are favoured by some purchasing agents does not justify the actions of the companies; purchasing agents are not the "public" whom the law in this case seeks to protect.

The agreements or arrangements having the effect or designed to have the effect of eliminating price and all terms and conditions of sale affecting price as a competitive factor in the sale of wire and cable products have deprived the public of the principal element in competition. With respect to quality, the other important element, the companies submitted that it has in effect been eliminated as a competitive factor by the standardization of the product, but the evidence does not show that a company was prevented from improving a product or introducing a new product. With the elimination of price and quality, there remain competition based on service, including delivery, the provision of technical information and assistance, and the maintenance of adequate stocks, and, above all, competition based on salesmanship. That competition in the industry

has in effect become a matter of salesmanship was indicated by a number of witnesses. For example:

T. A. Lindsay, of Automatic Electric:

Q. What does service mean?

A. I would say the availability of material and various other sales promoting devices which we use in order to encourage the business of our customers such as price cards and the work of salesmen dealing with contractors.

(Evidence, p. 743)

T. J. Bell, of Federal Wire and Cable:

. . . As I tried to point out before, I do not believe there is a purchasing agent in Canada who really cares where he gets his wire and cable aside from the sales effort that goes into the sale of the product. We are selling a similar product exactly to that of our competitors made to the same specifications . . .

(Evidence, p. 1910)

M. R. Macdonald, of Northern Electric:

. . . At the time we make our quotations we have no reason to know that we are going to get business other than our sales offices bring as much pressure as they can. We try a bit of entertaining now and then. A great deal of business is sold because our salesman knows his customer.

(Evidence, p. 572)

With respect to competition based only on salesmanship, Robertson, C. J., in Rex v. Container Materials Ltd. et al, (1941) 3 D. L. R. at pp. 167-168 said:

Competition from which everything that makes for success is eliminated except salesmanship is not the free competition that s. 498 is mainly designed to protect. It brings to the customer no opportunity to buy at a lower price or on better terms, or to buy better or more attractive goods for the same money, and this is one of the principal benefits to be had from free competition.

The evidence in the present inquiry establishes that the effect of the agreements and arrangements to prevent or lessen competition in the distribution and sale of wire and cable products by fixing common prices and uniform terms and conditions of sale for substantially the whole copper wire and cable manufacturing

industry in Canada was to limit competition essentially to salesmanship and to leave the buyer with no alternative but to buy the product at exactly the same price from one or other of the companies. Effective competition, predicated on price and quality, has been eliminated; the public has generally been denied the opportunity of buying at a lower price or on better terms than those fixed by agreement among the companies; and the system of competitive bidding has been vitiated. It follows that competition in the sale of wire and cable products in Canada has been unduly prevented or lessened and that the agreements and arrangements having and designed to have this effect have operated and are likely to operate to the detriment or against the interest of the public.

Accordingly, in my opinion, the companies named hereunder have been parties or privy to or knowingly assisted in the formation or operation of a combine within the meaning of Section 2 of the Combines Investigation Act:

Northern Electric Company, Limited
Phillips Electrical Works Limited
Automatic Electric (Canada) Limited
Canada Wire and Cable Company, Limited
Canadian General Electric Company, Limited
Cables, Conduits and Fittings, Limited
Federal Wire and Cable Company, Limited
Triangle Conduit and Cable (Canada) Limited
Boston Insulated Wire and Cable Co. Limited
Industrial Wire and Cable Limited

I am also of the opinion that, while all of these companies were parties to the over-all scheme to prevent or lessen competition, they did not all participate in the joint arrangements to the same degree; that the "Big Four" companies, namely, Northern Electric Company, Limited, Phillips Electrical Works Limited, Canada Wire and Cable Company, Limited, and Canadian General Electric Company, Limited, acting in concert, have dominated the industry, and, under the leadership of Northern Electric Company, Limited, have played the major part in formulating and maintaining the common policies and practices of the industry; that Phillips Electrical Works Limited and Automatic Electric (Canada) Limited have operated as a unit for the manufacture and sale of wire and cable products; that, while the five remaining companies have played a relatively smaller part in the formulation of common policies, their participation in the joint arrangements has been important in making such common policies effective; that the extent of their participation has been largely determined by the range of their products; that, accordingly, Cables, Conduits and Fittings, Limited, and Federal

Wire and Cable Company, Limited, have participated to a greater degree than Triangle Conduit and Cable (Canada) Limited, Boston Insulated Wire and Cable Co. Limited, and Industrial Wire and Cable Limited; and that Industrial Wire and Cable Limited has participated to a more limited degree than any of the other companies.

(Sgd.) H. Carl Goldenberg

Special Commissioner
Combines Investigation Act

Montreal, P. Q.
November 11, 1953.

APPENDIX

Table I

WIRE AND CABLE PRODUCTS MANUFACTURED BY THE SMALLER MANUFACTURERS

	Cables, Conduits & Fittings (1)	Triangle (1)	Industrial (1)	Federal (1)	Boston (2)
Uninsulated Conductors					
Copper, Copperweld, including Trolley Wire	*			*	
Aluminium & A. C. S. R.	*			*	
Copperweld - Copper Composite Conductors	*				
Weatherproof	*	*	*	*	*
Rubber Insulated & Braided	*	*		*	*
Cambric Insulated & Braided	*				*
Thermo Plastic Wires & Cables	*	*	*	*	
Cambric Insulated Leaded	*				
Rubber Insulated Leaded Power Cable	*				
Paper Insulated Leaded Power Cable	*				
Flexible Cords			*	*	*
Rubber Insulated Telephone Wire & Cable					*
AC & ACL Flexible Armoured Cable	*	*	*	*	
Non-Metallic Sheathed Cable	*	*	*	*	*
Magnet Wires - Enamelled				*	
All others				*	
All other types of Wire & Cable					

(1) As per return requested June 11, 1952.
(2) As per price sheets submitted in return requested June 11, 1952.

APPENDIX

Table II

CANADA: VALUE OF PRODUCTION OF WIRE AND CABLE PRODUCTS

Year	A Wire and Cable Industry	B The Nine Companies	C "B" as % of "A"	D The Big Four	E "D" as % of "A"
	$	$	%	$	%
1937	15,174,413	14,205,053	93.61	12,963,660	85.43
1938	12,678,886	12,624,896	99.57	11,367,778	89.69
1939	14,578,098	13,870,346	95.14	12,398,754	85.05
1940	22,557,053	22,390,571	99.26	20,195,645	89.53
1941	33,111,414	31,853,294	96.20	28,639,005	86.49
1942	32,908,456	31,868,860	96.84	28,744,192	87.35
1943	33,554,943	32,861,033	97.93	29,553,331	88.07
1944	31,539,277	29,323,238	92.97	25,289,128	80.18
1945	36,241,676	33,293,378	91.86	29,344,879	80.97
1946	39,434,009	35,740,912	90.63	30,112,743	76.36
1947	77,694,607	71,282,469	91.75	61,781,816	79.51
1948	85,603,281	75,521,085	88.22*	64,049,925	74.82
1949	85,784,882	76,125,334	88.74*	65,499,659	76.35
1950	90,858,936	83,244,969	91.62*	70,536,011	77.63
1951	123,768,524	115,016,320	92.93*	97,233,830	78.56

* If aluminium and A. C. S. R. conductors and aluminium alloys produced by manufacturers other than those listed above are excluded, less than 1 per cent of the wire and cable products were produced by companies other than the nine listed above in the years 1948, 1949, 1950 and 1951. (These are the only years for which aluminium wires and cables are shown separately.)

Source: Dominion Bureau of Statistics

APPENDIX

Table III

CANADA: IMPORTS AND EXPORTS OF WIRE AND CABLE PRODUCTS

Year	Total Value of Production in Canada	Total Value of Imports*	Total Value of Exports	Imports as a % of Production in Canada	Exports as a % of Production in Canada
	$	$	$	%	%
1937	15,174,413	357,154	436,834	2.35	2.88
1938	12,678,886	287,140	436,323	2.26	3.44
1939	14,578,098	302,647	761,255	2.08	5.22
1940	22,557,053	448,170	1,339,756	1.99	5.94
1941	33,111,414	599,625	2,325,313	1.81	7.02
1942	32,908,456	437,179	3,643,586	1.33	11.07
1943	33,554,943	600,023	6,786,777	1.79	20.23
1944	31,539,277	854,666	3,232,938	2.71	10.25
1945	36,241,676	821,871	3,853,945	2.27	10.63
1946	39,434,009	1,655,286	1,777,269	4.20	4.51
1947	77,694,607	3,422,791	5,507,253	4.41	7.09
1948	85,603,281	3,200,816	3,086,803	3.74	3.61
1949	85,784,882	2,077,948	2,114,998	2.42	2.47
1950	90,858,936	1,903,279	4,024,060	2.09	4.43
1951	123,768,524	4,072,761	4,523,264	3.29	3.65

* Most of the imports fell in the category "Non-Ferrous, n.o.p., Wire, single or several, covered with any material, including cable so covered, n.o.p." Since 1942 the U.S.A. has been the source of 90 per cent of the imports, except in 1946, 1950 and 1951. Imports from the U.K. rose sharply in 1950 and 1951 but even in these years 70 per cent originated in the U.S.A.

Source: Dominion Bureau of Statistics

Canada. Restrictive Trade Practices Commission
Electrical wire and cable products; report of H. Carl Goldenberg